

Kothandaraman v 80 Enters. Inc.

2019 NY Slip Op 30104(U)

January 9, 2019

Supreme Court, New York County

Docket Number: 150907/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

INDEX NO. 150907/2016

BALAMURALI KOTHANDARAMAN,

Plaintiff,

MOTION SEQ. NO. 002

- v -

80 ENTERPRISES INC. and CALLAGHAN ENTERPRISES INC.,

Defendants.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for QUASH SUBPOENA

Upon the foregoing documents, it is ordered that the motion is decided as follows.

In this personal injury action, plaintiff Balamurali Kothandaraman moves, pursuant to CPLR 2304 and 3101(d)(1)(iii), to quash subpoenas served by defendants 80 Enterprises Inc. and Callaghan Enterprises Inc. on his treating physicians. Plaintiff also seeks sanctions against defendants and their attorneys imposing costs and sanctions for frivolous conduct. Defendants oppose the motion. After oral argument, and after a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff claims that he was injured on March 11, 2015 when he fell on an allegedly defective stairway in a building owned and/or managed by defendants, against whom he subsequently commenced this action. Doc. 27. In his bills of particular, plaintiff alleged that he

was injured because the staircase at defendants' premises was in dangerous condition. Doc. 29, Bill of Particulars, at pars. 10-11; Supplemental Verified Bill of Particulars, at par. 1; Second Supplemental Bill of Particulars, at pars. 9-11. On September 8, 2017, plaintiff appeared for a deposition in this matter and testified, inter alia, that, during the 90 minutes preceding his accident, he drank three scotches. Doc. 33 at 36.

On or about October 19, 2017, defendants served deposition subpoenas on Dr. Rohi Bhalla and Dr. Bhavna Sandhu of St. Peter's University Hospital in New Brunswick, New Jersey, both of whom rendered treatment to plaintiff following the accident. Doc. 31. Dr. Sandhu's medical history note reflects, inter alia, that plaintiff had "few drinks" and "fell off the stairs" after a "disturbance in his balance." Doc. 34. Dr. Bhalla's note reflects that plaintiff had "one too many drinks" and "apparently had an accident down the stairs when he was drunk on this occasion." Doc. 35.

Plaintiff now moves to quash the subpoenas on the ground that defendants cannot conduct the depositions of his treating physicians. Further, plaintiff seeks costs and sanctions arising from defendants' allegedly frivolous conduct in seeking the depositions of the treating physicians.

Defendants oppose the motion, insisting that they are entitled to depose Drs. Sandhu and Bhalla as fact witnesses since plaintiff told the physicians that the incident occurred in a manner different than that alleged in this action.

LEGAL CONCLUSIONS:

Defendants maintain that they are entitled to conduct the depositions of Drs. Sandhu and Bhalla because they "possess information regarding plaintiff's statements (which he denied) as to

the cause of the accident.” Doc. 32, at par. 15. Although the notes by Drs. Sandhu and Bhalla indeed reflect that plaintiff consumed alcohol prior to the alleged accident, plaintiff admitted at his deposition, as noted above, that he consumed three scotches during the 90 minutes prior to his accident. Because the information sought from Drs. Sandhu and Bhalla is available from another source, i.e., plaintiff, and has indeed been obtained by defendants from plaintiff, there is no need to depose the doctors. *See Tuzzolino v Consolidated Edison Co. of N.Y.*, 135 AD3d 447, 448 (1st Dept 2016); *Carson v Hutch Metro Ctr., LLC*, 110 AD3d 468, 469 (1st Dept 2013); *Matter of New York City Asbestos Litig.*, 87 AD3d 467, 468 (1st Dept 2011); *Ramsey v New York Univ. Hosp. Ctr.*, 14 AD3d 349, 350 (1st Dept 2005). Thus, that branch of plaintiff’s motion seeking to quash the subpoenas is granted.

Although this Court concludes that defendants’ argument regarding the subpoenas is without legal merit, it further determines that “it was not ‘so egregious as to constitute “frivolous conduct” within the meaning of 22 NYCRR 130-1.1’. *Parametric Capital Mgt., LLC v Lacher*, 26 AD3d 175 (1st Dept 2006).” *Carson*, 110 AD3d at 469. Thus, that branch of plaintiff’s motion seeking costs and sanctions is denied.


Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of the motion seeking to quash the subpoenas served on Dr. Rohi Bhalla and Dr. Bhavna Sandhu is granted; and it is further

ORDERED that the branch of the motion seeking costs and sanctions against the defendants is denied; and it is further

ORDERED that this constitutes the decision and order of the court.

1/9/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: