

Pedrini v JLJ IV Enters., Inc .
2019 NY Slip Op 30642(U)
March 18, 2019
Supreme Court, New York County
Docket Number: 151657/2014
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. ADAM SILVERA</u>	PART	IAS MOTION 22
	<i>Justice</i>		
	-----X	INDEX NO.	<u>151657/2014</u>
	ROSEMARIE PEDRINI,	MOTION DATE	<u>01/09/2019,</u> <u>01/09/2019</u>
	Plaintiff,	MOTION SEQ. NO.	<u>002 003</u>
	- v -		
	JLJ IV ENTERPRISES, INC., JOHN MATERASSO		
	Defendant.		

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for TRIAL PREFERENCE.

Upon the foregoing documents, defendants' motion to strike the note of issue and for discovery (mot. seq. no. 002) and plaintiff's motion seeking a special trial preference (mot. seq. no. 003) are decided below.

Here, defendants seek to vacate the note of issue, arguing that plaintiff's third supplemental verified bill of particulars, dated July 25, 2018, alleges new injuries. In opposition, plaintiff argues that the verified bill of particulars, dated August 8, 2014, alleged specific psychological injuries such that the injuries listed in the third supplemental verified bill of particulars did not list any new injuries, rather it elaborated on injuries previously alleged.

Preliminarily, the Court notes that, by a So Ordered stipulation dated June 25, 2018, the parties stipulated that all discovery was completed. The third supplemental bill of particulars was served over one month later. A review of the verified bill of particulars reveals that plaintiff claimed "marked and severe emotional trauma, evidenced by irritability, sleeplessness, anxiety,

depression, apprehension, and other like and similar signs and symptoms and have adversely affected...[her] regular activities.” Notice of Motion, Exh. B, Verified Bill of Particulars, p. 6. However, plaintiff’s third supplemental verified bill of particulars specifically claimed “Posttraumatic Stress Disorder (Severe) [and] Major Depressive Disorder”. Notice of Motion, Exh. E., Third Supplemental Verified Bill of Particulars, p. 1. Although plaintiff previously claimed general psychological ailments, the two psychological disorders now claimed in the third supplemental verified bill of particulars are new disorders being claimed for the first time after the parties stipulated that all discovery was complete. Thus, defendants’ motion is granted in part and denied in part.

Here, where additional discovery is needed following the filing of the note of issue, the Court, in its discretion, denies the portion of defendants’ motion to strike the note of issue, and grants discovery as indicated below. 22 NYCRR §202.21(d) states that “[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.” As such, plaintiff shall appear for a further deposition on or before April 26, 2019 which shall be limited to only the new injuries claimed in her third supplemental verified bill of particulars. Moreover, defendants shall designate an independent medical examination on or before May 17, 2019, and plaintiff shall appear for such independent medical examination on or before June 14, 2019 which shall be limited to only the new injuries claimed in her third supplemental verified bill of particulars.

As for the portion of defendants’ motion seeking a deposition of a non-party witness, the Court notes that non-party depositions may be held subsequent to the filing of the note of issue.

Pursuant to CPLR §3106(b), the party seeking to depose a non-party witness need only serve a subpoena on such witness. The Court notes that plaintiff does not oppose the portion of defendants' motion seeking a deposition of a non-party witness. Thus, any party seeking the deposition of Delores DiLotti shall subpoena such witness in accordance with the CPLR.

Turning to plaintiff's motion seeking a trial preference, it is well settled that "[c]ivil cases shall be tried in the order in which notes of issue have been filed, but the following shall be entitled to a preference: ... (4) in any action upon the application of a party who has reached the age of seventy years." CPLR 3403(a)(4). Here, it is undisputed that plaintiff was born in 1946 and is currently over 70 years old. Thus, plaintiff's motion for a trial preference is granted without opposition.

Accordingly, it is

ORDERED that defendants' motion to vacate the note of issue (mot. seq. no. 002) is granted only to the extent that discovery shall proceed as ordered herein and below; and it is further

ORDERED that plaintiff shall appear for a further deposition on or before April 26, 2019 which shall be limited to only the new injuries claimed in her third supplemental verified bill of particulars; and it is further

ORDERED that defendants shall designate the independent medical examination on or before May 17, 2019; and it is further

ORDERED that plaintiff shall appear for an independent medical examination on or before June 14, 2019 limited to only the new injuries claimed in her third supplemental verified bill of particulars; and it is further

ORDERED that plaintiff's motion for a trial preference (mot. seq. no. 003) is granted

on the ground that the plaintiff has reached the age of 70 years; and it is further

ORDERED that counsel for plaintiff shall, within 15 days from entry of this order, serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties shall appear for judicial mediation on July 11, 2019 at 9:30am in Part 40, room 422 of 60 Centre Street, New York, NY.

This constitutes the Decision/Order of the Court.

3/18/2019
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: