Yong Jun Li v A.Z.N. Realty LLC
2019 NY Slip Op 30936(U)
March 21, 2019
Supreme Court, New York County
Docket Number: 160401/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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YONG JUN LI,

Plaintiff

- against -

A.Z.N. REALTY LLC,

Defendant

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Index No. 160401/2015

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Defendant moves to vacate the note of issue served by plaintiff December 3, 2018, and to compel his authorizations for further medical records and his further physical examination and deposition. C.P.L.R. § 3124; 22 N.Y.C.R.R. § 202.21(e). If the court does not vacate the note of issue, defendant seeks to extend the time to move for summary judgment until 120 days after completion of the requested disclosure. C.P.L.R. §§ 2004, 3212(a).

Plaintiff's bill of particulars alleged primarily right shoulder injuries, but also cervical and lumbar pain and derangement, permanent and substantial restriction of motion due to all his injuries, and future medical treatment, including surgery, required by all his injuries. Consequently, when defendant deposed plaintiff, its attorney questioned plaintiff regarding his lumbar spine, including his pain and other symptoms in the lumbar spine and the physical therapy he was receiving for his lumbar spine. Likewise, when defendant's orthopedist

examined plaintiff, the orthopedist fully examined plaintiff's lumbar spine and his range of motion in the lumbar spine and diagnosed a resolved lumbar spine strain.

Nevertheless, only upon filing and serving a note of issue did plaintiff serve a supplemental bill of particulars specifically alleging disc protrusion at the L5-S1 level with stenosis and an effect on the S1 nerve root, as well as permanent and significant restriction of motion in the lower back and future surgery on the lower back. Plaintiff also exchanged a report of a magnetic resonance imaging (MRI) of his lumbar spine, which was unavailable until after plaintiff's deposition, and authorizations for defendant to obtain the MRI films. This further diagnostic testing of plaintiff's lumbar spine amounts to the "unusual or unanticipated circumstances" that are required after the note of issue to permit further disclosure of evidence not previously requested. 22 N.Y.C.R.R. § 202.21(d). See Arons v. Jutkowitz, 9 N.Y.3d 393, 411 (2007); Cuevas v. 1738 Assoc., L.L.C., 111 A.D.3d 416, 416-17 (1st Dep't 2013); Bermel v. Dagostino, 50 A.D.3d 303, 304 (1st Dep't 2008).

Defendant acknowledges that, since its orthopedist already examined plaintiff's lumbar spine, the orthopedist need not repeat that examination and may supplement his conclusions about plaintiff's lumbar spine by reviewing the MRI films and report and records of plaintiff's recent treatment. Plaintiff has agreed to provide the further necessary authorizations for his medical records. Since defendant was unaware of the MRI when

defendant deposed plaintiff, however, it seeks to question plaintiff about the MRI. Therefore the court grants this much of defendant's requested relief. Given the limited scope of the inquiry and the expectation that plaintiff's knowledge about the MRI is based mostly on what medical personnel informed him and not on his personal knowledge, the court limits his further deposition to one hour of questioning by defendant about the MRI, inclusive of plaintiff's answers, but exclusive of colloquy. See Hutton v. Aesthetic Surgery, P.C., 161 A.D.3d 595, 596 (1st Dep't 2018); Nathel v. Nathel, 55 A.D.3d 434, 434 (1st Dep't 2008); Matter of Dier, 13 A.D.3d 150, 151 (1st Dep't 2004); Bielat v. Montrose, 249 A.D.2d 103, 103 (1st Dep't 1998). Only if examination by plaintiff's attorney exceeds the scope of defendant's examination about the MRI may defendant inquire beyond that original scope and beyond the one hour, but not beyond the scope of the examination by plaintiff's attorney. Defendant shall conduct the deposition by May 22, 2019, at an agreed time and place, or waive entitlement to a further deposition, unless plaintiff unreasonably has refused to agree to a time and place for the deposition.

Since the limited scope of plaintiff's further deposition does not bear on defendant's liability, this additional disclosure does not constitute grounds to extend its time to move for summary judgment. C.P.L.R. § 3212(a); Jimenez v. Haros, 39 A.D.3d 437, 437 (1st Dep't 2007); Pena v. Women's Outreach Network, Inc., 35 A.D.3d 104, 108 (1st Dep't 2006); Espejo v.

Hiro Real Estate Co., 19 A.D.3d 360, 361 (1st Dep't 2005). See Quinones v. Joan & Sanford I. Weill Med. Coll. & Graduate Sch. of Med. Sciences of Cornell Univ., 114 A.D.3d 472, 473 (1st Dep't 2014); Kershaw v. Hospital for Special Surgery, 114 A.D.3d 75, 83 (1st Dep't 2014); Ford v. City of New York, 54 A.D.3d 263, 266-67 (1st Dep't 2008). Consequently, the court grants defendant's motion to compel disclosure to the limited extent set forth above, but denies its motion insofar as it seeks further disclosure, to vacate the note of issue, or to extend the deadline to file and serve motions for summary judgment. C.P.L.R. §§ 3124, 3212(a); 22 N.Y.C.R.R. § 202.21(d) and (e); Ortiz v. Arias, 285 A.D.2d 390, 390-91 (1st Dep't 2001).

DATED: March 21, 2019

LUCY BILLINGS, J.S.C.

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