

**Hamilton v Pejdah**

2019 NY Slip Op 32539(U)

July 15, 2019

Supreme Court, Richmond County

Docket Number: 151618/2017

Judge: Kim Dollard

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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SHANTEL HAMILTON, as MOTHER and  
NATURAL GUARDIAN of SEQUAN FRANCIS  
And SHANTEL HAMILTON

*Plaintiffs,*

*-against-*

MIRSAD PEJDAH and RICHMOND COUNTY  
COUNTRY CLUB

*Defendants.*

DCM PART 4

Present:

Hon. Kim Dollard

**DECISION AND ORDER**

Index No. 151618/2017

Motion No. 10

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The following papers numbered 1 to 3 were fully submitted on the 28<sup>th</sup> day of June, 2019:

	Pages Numbered
Notice of Motion By Plaintiff With Supporting Affirmation, Papers, and 41 Exhibits (Dated: June 5, 2019) .....	1
Affirmation in Opposition By Defendants With Supporting Papers and 6 Exhibits (Dated: June 21, 2019) .....	2
Reply Affirmation By Plaintiff With Supporting Papers (Dated: June 25, 2019).....	3

On July 19, 2017 the infant plaintiff, Sequan Francis, was struck by a vehicle operated by defendant, Mirsad PejDAH, and owned by defendant, Richmond County Country Club. By Amended Decision and Order dated October 3, 2018, this Court denied plaintiff's motion and defendants' cross motion for summary judgment. Among other things, this Court found that issues of fact existed with respect to the proximate cause of the accident based on opposing expert affidavits.

Plaintiff now moves for renewal of the summary judgment motion and for other multiple relief including striking certain testimony, striking defendants' answer, a finding of perjury on the part of the defendants, for the imposition of sanctions, and for a change of venue.

For the reasons set forth below, the plaintiff's motion is denied in its entirety.

### **Renewal Motion**

Plaintiff moves for renewal of the summary judgment motion on the basis that defendant Pejdah's vision records (which were not available at the time of the initial summary judgment motion) reveal that this defendant had visual ailments, including nuclear sclerosis (advanced cataracts).

A motion for leave to renew is the appropriate vehicle when new factual information is being provided to the court, which was not included in opposition to the prior motion. CPLR 2221(e). So long as the party has a reasonable justification for not previously including the newly presented information, such omission will be deemed excusable and the motion for renewal should be granted Strong v. Brookhaven Mem'l Hosp. Med. Ctr., 240 A.D.2d 726, 726-27 (2d Dep't 1997).

While the vision records may not have been available because plaintiff moved for summary judgment before the Note of Issue was filed and before all discovery had been completed, plaintiff has not demonstrated how Pejdah's vision records would alter this court's prior determination as required by CPLR 2221(e)(2). Plaintiff provides no medical or expert basis to conclude that Pejdah's eye conditions rendered him "visually impaired," on the accident date and in any way contributed to the accident. Therefore, the plaintiff's motion to renew is granted, and upon renewal, the court adheres to its initial determination denying summary judgment.

### **Motion to Striking Non-Party Witness Testimony**

Within the same motion, plaintiff also moves pursuant to CPLR §3103(c) to strike the testimony of the non-party witnesses: Maria Gonzalez Vega, Efthemios Savvides, Police Officer Romero, Police Officer LaTour, Police Officer Dunn, Police Officer Fitzpatrick, Detective Sheehan, and Detective Thomas. The plaintiff also seeks to suppressing any benefits defendants gained and any future benefits that defendants may gain from their use of the Police Investigation File and video.

In support, the plaintiff makes unfounded and factually unsupported allegations that the deposition testimony of the non-party deponents from the Police Department was somehow manipulated by defendants. Plaintiff makes similar unsubstantiated arguments regarding the Police Investigation File and video. Plaintiff further asserts that striking of other deposition testimony is warranted because they took place after the close of discovery. However, the record and transcripts are devoid of any statement by plaintiff that they were participating in the depositions over objection. The

depositions were agreed upon and ordered by the court. Therefore, this branch of plaintiff's motion is also denied.

### **Striking Defendants' Answer**

Plaintiff next moves to pursuant to CPLR § 3101 and §3216, to strike the defendants' answer for failing to provide certain alleged outstanding discovery. The discovery aspect of the motion is now being made post-note of issue without any explanation. Further, a referee had been assigned to this case to monitor discovery, and representations were made that discovery was complete. Additionally, no permission was given to the plaintiff for this or any branch of the motion regarding discovery pursuant to this court's rules. Therefore, this branch of plaintiff's motion is similarly denied.

### **Perjury**

In the same motion, plaintiff moves pursuant to N.Y. Penal Law § 210.15 for a finding that defendants committed perjury in the first degree by swearing falsely on material matters to the action because of the alleged discrepancy between Pejdah's deposition testimony and the vision records. Plaintiff further supports the perjury branch of the motion by contending that the Richmond County Country Club representative, Efthemies Savvides, had conflicting testimony regarding the accident video. Upon review of the transcripts, Plaintiff has not demonstrated that the defendants committed perjury. Therefore, that branch of Plaintiff's motion is denied.

### **Sanctions**

Next, the plaintiff moves pursuant to 22 NYCRR 130.1, for costs to the plaintiffs, and imposing sanctions upon the defendants. In support, Plaintiff makes blanket allegations regarding defense counsel's alleged conduct throughout the discovery phase of this action. Plaintiff's claim for sanctions are unsubstantiated and consist of nothing more than fifteen pages of exaggerated scheduling and discovery issues. For those reasons, this court referred the discovery oversight to a court appointed referee whereby all issues were resolved. The plaintiff has not identified a single instance warranting sanctions pursuant to 22 NYCRR 130.1 Therefore, this branch of the plaintiff's motion is also denied.

### Change of Venue

Lastly within the instant motion, the plaintiff moves for a change of venue from Richmond to New York County pursuant to CPLR§ 510(2) arguing that an impartial trial cannot be obtained in Richmond County.

The defendants correctly argue that pursuant to CPLR§ 510(2), the plaintiff must establish, by admissible factual evidence, that an impartial trial cannot be obtained in Richmond County (Lisa v. Parikh, 131 A.D.3d 1135, 2<sup>nd</sup> Dept. 2015).

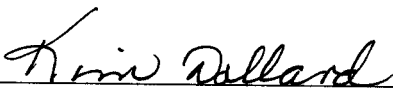
Plaintiff has not offered sufficient admissible grounds for such motion beyond mere speculation. Therefore, that branch of Plaintiff's motion is denied.

Accordingly, it is

ORDERED that the plaintiff's motion to renew is granted, and that upon renewal, the court adheres to its prior determination; and it is further,

ORDERED, that all other branches of the plaintiff's motion is denied.

ENTER,



Hon. Kim Dollard

Acting Supreme Court Justice

Dated: 7/15/19