

Anzalone v Casanova
2019 NY Slip Op 32769(U)
September 19, 2019
Supreme Court, New York County
Docket Number: 156410/2017
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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CHRISTOPHER ANZALONE,
Plaintiff,

INDEX NO. 156410/2017

MOTION DATE 05/22/2019

MOTION SEQ. NO. 003

- v -

RADAME CASANOVA,
Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for STRIKE PLEADINGS

Upon the foregoing documents, it is ordered that defendant's motion to strike the complaint, or to compel, for plaintiff's failure to comply with discovery is granted only to the extent that discovery is ordered as indicated below.

Here, defendant is seeking to strike plaintiff's complaint, or to compel plaintiff to produce documents which were requested in defendant's post deposition demands dated January 7, 2019. Such demand requests, inter alia, plaintiff's employment records and tax returns, an authorization for plaintiff's psychiatric records from Dr. Zaidi, and authorizations relating to plaintiff's drug use treatment. In opposition, plaintiff argues that he has provided an authorization for employment records which satisfies his burden of establishing lost wages, and, thus tax returns and bank statements are unnecessary, overbroad, and irrelevant. Plaintiff further argues that he did not make a claim for psychological injury such that defendant's demand for plaintiff's confidential psychological records must be denied. Lastly, plaintiff argues that his drug rehabilitation records are protected, and that defendant failed to show that the interests of justice outweigh the need for confidentiality. In reply, defendant argues that plaintiff's

authorization for employment records would typically satisfy their burden. However, here, where plaintiff testified that he works with his father who is the financial manager at plaintiff's place of employment, and where plaintiff's place of employment has failed to comply with the employment authorization, plaintiff's lost earnings claim must be substantiated with tax returns. Defendant further argues that plaintiff's psychological records are relevant as plaintiff testified that he saw a psychiatrist as a result of the subject motor vehicle accident. Finally, defendant argues that plaintiff's drug treatment records are not confidential in that such records are related to the causation of plaintiff's alleged lung injuries.

Here, defendant's motion to strike is denied as defendant failed to establish that plaintiff's failure to comply with discovery requests was willful and contumacious. As to the portion of defendant's motion seeking to compel discovery, a review of plaintiff's deposition transcript reveals that he was employed and worked with his father, and defendant has established that plaintiff's father is employed as the financial manager. Defendant further established that plaintiff's employer has failed to honor the authorization signed by plaintiff. Here, where plaintiff specifically testified that he was basing his lost earnings calculations on W-2s and other documents which he testified are in his possession, defendant has established that such documents are discoverable. It is well settled that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action". CPLR 3101. The requested documents are clearly relevant as plaintiff testified that he based his lost earnings on his W-2s and other documents which he concedes is in his possession. Thus, within 30 days plaintiff shall provide documents related to his income from December 2016 through the present including, but not limited to: W-2 forms; any and all documents reflecting payment for services provided by plaintiff; local, state and federal individual, business and corporate tax filings; and

any and all documents relied upon by plaintiff to calculate his lost earnings claim.

As to defendant's demand for plaintiff's psychological records, defendant argues that, as plaintiff specifically testified to seeing psychiatrists as a result of this accident, such records are relevant. The Court notes that plaintiff testified at his deposition that he sought the assistance of a psychiatrist as a result of the incident. Plaintiff's testimony reveals that he saw Dr. Zaidi as a result of psychological injuries resulting from this accident. Plaintiff further testified that, as a result of the accident, he spoke with many different psychiatrists in the rehabilitation center. However, plaintiff does not make a claim for psychological injury. Thus, defendant's demand for psychological records is denied. Further, as no claim for psychological injury is asserted, plaintiff is precluded from mentioning any psychological treatment or claims at trial or in substantive motion practice.

Finally, with regards to defendant's demand for plaintiff's drug treatment records, such records may be relevant to defendant's defense in that plaintiff's verified bill of particulars makes specific claims that the instant motor vehicle accident caused chest pains, shortness of breath, right side pneumothorax requiring surgery, including bronchoscopy, as well as other lung related injuries. There is evidence that, at or around the time of the subject accident, there was substantial drug use by plaintiff that could affect and/or injure his lungs. As such, defendant's motion is granted to the extent that the Court shall do an in camera inspection of plaintiff's drug treatment records to determine what documents, if any, are discoverable. The date of the in camera shall be set on the next compliance conference date.

Accordingly, it is

ORDERED that defendant's motion is granted to the extent that plaintiff Christopher Anzalone is ordered to provide, within 30 days, documents related to his income from December

2016 through the present including, but not limited to: W-2 forms; any and all documents reflecting payment for services provided by plaintiff; local, state and federal individual, business and corporate tax filings; and any and all documents relied upon by plaintiff to calculate his lost earnings claim; and it is further

ORDERED that defendant's demand for psychological records is denied; and it is further

ORDERED that plaintiff is precluded from mentioning any psychological treatment or claims at trial or in substantive motion practice; and it is further

ORDERED that the parties shall appear on October 4, 2019 at 9:30am, in room 106 of 80 Centre Street, New York, NY, for a compliance conference; and it is further

ORDERED that on October 4, 2019, the Court shall set a date for an in camera inspection of plaintiff's drug treatment records; and it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this decision/order upon plaintiff with notice of entry.

This constitutes the Decision/Order of the Court.

9/19/19
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: