

Punter v New York City Health & Hosps. Corp.

2019 NY Slip Op 34239(U)

November 4, 2019

Supreme Court, New York County

Docket Number: 805071/2015

Judge: George J. Silver

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: George J. Silver
Justice

PART 10

Index Number : 805071/2015

PUNTER, IESHA

vs

NEW YORK CITY HEALTH AND

Sequence Number : 003

RENEWAL

INDEX NO. 805071/15

MOTION DATE _____

MOTION SEQ. NO. (003)

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

granted in accordance with the attached decision and order. The court, however, adheres to its initial ruling with respect to audit trails upon reargument, as indicated.

Dated: November 4, 2019

George J. Silver J.S.C.
HON. GEORGE J. SILVER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 10

IESHA PUNTER

Index No.: 805071/2015

-against-

Hon. GEORGE J. SILVER

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, et al.

Justice Supreme Court

The following papers numbered 1 to 3 were read on this motion to REARGUE (Seq. 003):

Table with 3 rows: Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed (No(s) 1, 2); Answering Affidavit and Exhibits (No(s) 2, 3); Replying Affidavit and Exhibits (No(s) 3).

Plaintiff IESHA PUNTER's ("plaintiff") motion to reargue this court's decision and order dated April 12, 2019, and defendants' cross-motion, are decided as follows:

A motion for leave to reargue under CPLR §2221, "is addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision'" (William P. Pabl Equipment Corp. v Kassis, 182 AD2d 22 [1st Dept 1992] lv denied and dismissed 80 NY2d 1005 [1992], rearg. denied 81 NY2d 782 [1993]).

Here, on reargument the court's attention is drawn to fact that this court's April 12, 2019 order, as originally drafted, indicated that it relied on the trial court's ruling in Vargas v. Lee, 2015 NY Slip Op 31048 U (Sup, Ct. Kings Co. 2015), which was subsequently reversed by the Appellate Division, Second Department (see Vargas v. Lee, 179 AD2d 1073 [2d Dept. 2019]).

Setting aside the fact that Vargas was decided by the Appellate Division, Second Department, rather than the Appellate Division, First Department, the court notes upon reargument that the trial court's initial determination in Vargas is so factually distinguishable from the instant case that this court's initial reliance on it was in error. To be sure, in Vargas, following the deposition of a defendant doctor, plaintiffs made a motion to compel the production of an electronic audit trail after learning that portions of the medical record were withheld, notwithstanding the defendants' representation that they had provided plaintiffs' attorney with a complete set of medical records.

Motion is Respectfully Referred to Justice:
Dated:

Here, there has been no showing that defendants have withheld records from plaintiff. Had there been a basis in the record from which plaintiff could conclude that the hospital withheld portions of plaintiff's hospital record, this matter would be factually similar to the trial court decision in *Vargas*. Instead, here there is no claim or allegation relating to lost or altered records. In fact, this court's April 12, 2019 order made reference to that fact, noting that "plaintiff has made no allegation that the EMRs are inauthentic or improperly altered." The plaintiffs in *Vargas* had made such a showing, a fact that this court initially overlooked but that the Appellate Division, Second Department, correctly found. As such, plaintiff's questioning of this court's initial reliance on *Vargas* is correct, but for different reasons than those proffered by plaintiff. To be sure, the court did not incorrectly deny the application for an audit trail. Rather, the factual dissimilarities between the trial court findings in *Vargas* and the instant case, make *Vargas* distinguishable. To the extent that it applies, the Appellate Division, Second Department, correctly found that the trial court in *Vargas* erred insofar as it did not appreciate the factual support proffered by the plaintiffs. Here, where plaintiff did not provide factual support analogous to what was divulged at the trial court-level in *Vargas*, this court correctly found that plaintiff is not entitled to an audit trail at the present juncture in this litigation.

Therefore, it is hereby

ORDERED that the branch of plaintiff's motion to reargue this court's decision and order of April 12, 2019 with respect to the denial of an audit trail, is granted, and upon reargument, the court modifies its earlier determination with respect to the reasoning for denying plaintiff's application for an audit trail, but still adheres to its finding denying plaintiff's requested relief for an audit trail for the reasons articulated; and it is further

ORDERED that the parties are directed to appear for a conference before the court on December 17, 2019 at 9:30 AM at the courthouse located at 111 Centre Street, Room 1227 in the County and City of New York (Part 10).

This constitutes the decision and order of the court.

Dated: November 4, 2019 Hon. George J. Silver
GEORGE J. SILVER, J.S.C.
GEORGE J. SILVER

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION (SEQ. 003) GRANTED DENIED GRANTED IN PART OTHER