

**Stevenson v Joseph**

2019 NY Slip Op 34431(U)

September 12, 2019

Supreme Court, Greene County

Docket Number: 2018-0594

Judge: Raymond J. Elliott, III

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court, held in and for the County of Greene, in the Village of Catskill, New York, on the 12<sup>th</sup> day of September, 2019.

PRESENT: HON. RAYMOND J. ELLIOTT, III  
Justice

SUPREME COURT  
COUNTY OF GREENE STATE OF NEW YORK

HAROLD STEVENSON,

Plaintiff,

-against-

DECISION AND ORDER  
INDEX NO. 2018-0594

JAMES F. JOSEPH, JAMES F. JOSEPH  
REVOCABLE TRUST, HOTTENROTH  
& JOSEPH ARCHITECTS, and JAMES F.  
JOSEPH JR., Individually, and as Trustee of  
the JAMES F. JOSEPH REVOCABLE TRUST,

Defendants.

APPEARANCES: MICHAEL CONWAY, ESQ.  
Harris, Conway & Donovan, PLLC  
50 State Street, 2<sup>nd</sup> Floor  
Albany, NY 12207  
Attorney for Plaintiff

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7 Washington Square, PO Box 15085  
Albany, NY 12212  
Attorney for Defendant Hottenroth & Joseph Architects

RAYMOND J. ELLIOTT, III J.S.C.

Before the Court is a motion to compel/preclude made by Defendant Hottenroth

DECISION AND ORDER



Marilyn Farrell, County Clerk

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DECISION AND ORDER  
INDEX NO. 2018-0594

& Joseph Architects (hereinafter Defendant). Defendant asserts that Plaintiff's Bill of Particulars is unnecessarily vague and fails to provide sufficient information with which it may form a defense. Specifically, Defendant asserts that Plaintiff improperly claimed to be both temporarily and permanently disabled as well as partially and fully disabled, did not sufficiently particularize the alleged statutory violations, and did not sufficiently allege the details of how Plaintiff was injured.

Plaintiff, through counsel, opposes the motion, contending that CPLR 3043 sets forth the specific requirements for a bill of particulars in a personal injury case and that the 14-page Bill of Particulars that was provided fulfills these requirements. Additionally, Plaintiff's Counsel notes that he is "likely to supplement the Bill of Particulars at least once prior to Trial (as we gain information and as the injuries progress)." Plaintiff further asserts he will also provide additional information regarding permanency as part of expert disclosures.

At a conference held on September 10, 2019, this Court heard from both parties regarding their assertions related to this motion.

"The purpose of a bill of particulars is to amplify the pleadings, limit the proof and prevent surprise at trial" (*Myers v Community Gen. Hosp. of Sullivan County*, 51 AD3d 1359, 1360 [3d Dept 2008] [internal quotation marks, brackets and citations omitted]; accord *Stoddard v New York Oncology Hematology, P.C.*, 172 AD3d 1504, 1505-1506 [3d Dept 2019]). "[E]ach defendant is entitled to a bill of particulars that narrows the issues sufficiently to permit a reasonable defense" (*Heyward v Ellenville*

DECISION AND ORDER  
INDEX NO. 2018-0594

*Community Hosp.*, 215 AD2d 967, 968 [3d Dept 1995], accord *Hayes v Kearney*, 237 AD2d 769, 770 [3d Dept 1997] [internal quotation marks and citation omitted]).

Likewise, “a bill of particulars must specify . . . the statutes, regulations or ordinances alleged to have been violated by each defendant” (*Neissel v Rensselaer Polytechnic Inst.*, 30 AD3d 881, 882 [3d Dept 2006]). However, “[a] bill of particulars need not set forth matter that is evidentiary in nature, as such information is more appropriately obtained through depositions and expert disclosure” (*Id.*). Further, it is well settled that “[t]rial courts have broad discretion to determine whether a party has complied with discovery demands or provided sufficient information in a bill of particulars” (*Stoddard v New York Oncology Hematology, P.C.*, 172 AD3d at 1506).

Plaintiff unquestionably stated the specific statutes he asserts were violated. Further of note, Labor Law § 240 establishes extremely broad liability for owners and contractors. As the pattern jury instructions provide, a jury need only find “that the (scaffolding, hoists, etc.) was not so (constructed, placed, operated, maintained) as to give proper protection to plaintiff in the performance of the work, and that the (construction, placement, operation, maintenance) of the (scaffolding, hoists, etc.) was a substantial factor in causing plaintiff’s injury” (PJI 2:217).

Considering this broad liability, Plaintiff need not establish the particular way he fell beyond that, as alleged, Plaintiff was not provided with “an appropriate and safe ladder” and that Defendant “failed to ensure that the ladder was stabilized.” Certainly during depositions or through other discovery devices, Defendant may uncover

DECISION AND ORDER  
INDEX NO. 2018-0594

information that establishes that Plaintiff was the sole proximate cause of his injuries, but “[a] bill of particulars is not a form of disclosure” (*Blank v Schafrann*, 180 AD2d 886, 887 [1992] [Noting comparatively that “[o]n the other hand, interrogatories are a discovery device and may be substantially broader in nature”]; see *Mayer v Hoang*, 83 AD3d 1516, 1517 [4<sup>th</sup> Dept 2011] [A bill of particulars “is not an evidence-gathering device”]).

Here, the Court finds that while Plaintiff’s answers do not meet the “level of specificity sought by [D]efendant . . . [P]laintiff’s allegations provide [D]efendant with sufficient information to conduct depositions and prepare a defense” (*Graves v County of Albany*, 278 AD2d 578, 578 [3d Dept 2000]; see *Butler v Carfagna*, 32 AD3d 1229, 1230 [4<sup>th</sup> Dept 2006]). The Court notes that the Bill of Particulars leaves a level of vagueness that will be unacceptable by the eve of time of trial. While “nothing in the CPLR limits the use of a demand for a bill of particulars until after disclosure” (*Foster v Moses Ludington Hosp.*, 223 AD2d 905, 905 [3d Dept 1996]), this Court has “discretion in accepting [the] promise of future particularization” based on eventual expert evaluations, further medical treatment, and other relevant developments, particularly considering the significant nature of the injuries (*Graves v County of Albany*, 278 AD2d at 579). Therefore, the Court exercises its discretion with the expectation that Plaintiff will provide a supplemental bill of particulars at the appropriate time (see CPLR 3043 [b]; see also *Miccarelli v Fleiss*, 219 AD2d 469, 470 [1<sup>st</sup> Dept 1995] [Where plaintiff claims to lack “present knowledge of relevant information requested by the demand, they should be

DECISION AND ORDER  
INDEX NO. 2018-0594

as responsive as possible, stating their inability to respond if such is the case, and upon acquiring the information after disclosure, serving a supplemental bill of particulars”]).

The Court further notes that Defendant contends it is “well settled that broad allegations of physical injury contained in a complaint and bill of particulars are insufficient.” In support of this proposition, Defendant cites *Avila v 106 Corona Realty Corp.*, (300 AD2d 266, 267 [2d Dept 2002]), *St. Clare v Cattani*, (128 AD2d 766, 766 [2d Dept 1987]), *Daniele v Long Is. Jewish-Hillside Med. Ctr.*, (74 AD2d 814, 814 [2d Dept 1980]), *Reyes v Lexington 79th Corp.*, (149 AD3d 508, 509 [1<sup>st</sup> Dept 2017]), *Farrell v E.W. Howell Co., LLC*, (103 AD3d 772, 773 [2d Dept 2013]); *Chervin v Macura*, 28 AD3d 600, 601 [2d Dept 2006]); *Caplow v Otis El. Co.*, (176 AD2d 199, 200 [1<sup>st</sup> Dept 1991]). Rather than standing for the proposition put forth by Defendant, these cases instead hold that where a “plaintiff has affirmatively placed [his or] her entire medical condition in controversy through the broad allegations of a physical injury,” their current medical condition and medical history is broadly discoverable (*Diamond v Ross Orthopedic Group P.C.*, 41 AD3d 768, 768 [2d Dept 2007]; see *Kanaly v Demartino*, 162 AD3d 142, 146 [3d Dept 2018]). The Court finds the same standard will apply here and Plaintiff, by making such broad allegations, does put Plaintiff’s entire medical condition in controversy and the Court will require Plaintiff to provide all necessary releases as part of disclosure.

According, it is

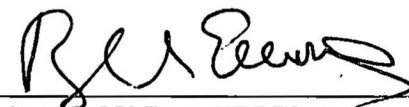
**ORDERED**, Defendant’s Motion to Compel/Preclude is **denied**.

DECISION AND ORDER  
INDEX NO. 2018-0594

This shall constitute the Decision, Order and Judgment of the court. This Decision, Order and Judgment is being returned to the attorney for Plaintiff. All original supporting documentation is being filed with the Greene County Clerk's Office. The signing of this Decision, Order and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that rule relating to filing, entry and notice of entry.

**SO ORDERED AND ADJUDGED****ENTER.**

Dated: September 12, 2019  
Catskill, New York



RAYMOND J. ELLIOTT, III  
Supreme Court Justice

**Papers Considered:**

1. Defendant Hottenroth & Joseph Architects' Notice of Motion to Compel/Preclude dated August 16, 2019; Attorney Affirmation of Good Faith and In Support of Defendant's Motion to Compel/Preclude dated August 16, 2019; Annexed Exhibits A-J.
2. Defendant Hottenroth & Joseph Architects Memorandum of Law dated August 16, 2019, in Support of the Motion to Compel/Preclude.
3. Plaintiff's Attorney Affirmation in Opposition dated August 21, 2019; Annexed Exhibit A.
4. Defendant Hottenroth & Joseph Architects' Attorney Affirmation in Reply dated August 28, 2019, in Further Support of Defendant's Motion to Compel/Preclude