

Karlsson v Westchester County Healthcare Corp.

2019 NY Slip Op 34729(U)

March 12, 2019

Supreme Court, Westchester County

Docket Number: Index No. 50250/2016

Judge: Joan B. Lefkowitz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
JAMIE-ANN KARLSSON and MICHAEL B. KARLSSON II,

Plaintiffs,

-against-

WESTCHESTER COUNTY HEALTHCARE CORP.,
PUTNAM HOSPITAL CENTER, EOS MEDICAL
GROUP, P.C., STUART ROBERTS, MD, PUTNAM
IMAGING ASSOCIATES, P.C., MARAHI KAI, MD,
DAVID SPIELVOGEL, MD,

Defendants.
-----X

LEFKOWITZ, J.

DECISION & ORDER
Index No. 50250/2016

Seq. No. 5

The following papers were read on plaintiffs' motion for, inter alia, an order compelling defendant Putnam Hospital Center to produce certain discovery, in particular the daily quality assurance testing documents on the CT scan machine utilized to perform a CT pulmonary angiogram on the plaintiff Jamie-Ann Karlsson for the period of July 2 through July 10, 2013.

Order to Show Cause - Affirmation in Support - Exhibits A through F¹
Affirmation in Opposition - Exhibits A through G²
NYSCEF File

Upon the foregoing papers and proceedings held herein, this motion is determined as follows:

On or about January 8, 2016, plaintiffs commenced this medical malpractice action against defendants alleging, inter alia, that defendants Putnam Imaging Associates, P.C., Kai and

¹The plaintiff's Affirmation in Support was uploaded twice to the NYSCEF file at NYSCEF Doc. No. 110 and Doc. No. 114. In addition, Exhibits A through C were also uploaded twice to the NYSCEF file as NYSCEF Doc. Nos. 111 through 113 and refiled at NYSCEF Doc. Nos. 115 through Doc. No. 117.

²The defendant Putnam Hospital's Affirmation in Opposition and supporting exhibits were also uploaded twice to the NYSCEF file at NYSCEF Doc. No. 123 through Doc. No. 130 and refiled at NYSCEF Doc. Nos. 131 through Doc. No. 138.

Speilvogel misdiagnosed the plaintiff Jamie-Ann Karlsson with an ascending aortic dissection based upon a single pulmonary Angio CT Scan. Plaintiffs further allege that defendants Kai and Speilvogel proceeded to surgery without performing additional diagnostic testing or providing alternatives to open heart surgery. As a result, plaintiffs allege that Ms. Karlsson underwent an unnecessary median sternotomy and mediastinal exploration without her informed consent. Issue was joined on or about May 26, 2016, when defendant Stuart Roberts, MD served his answer. Defendant Putnam Hospital Center ("Putnam Hospital") served its answer on or about January 27, 2017.

By so-ordered stipulation entered on or about Sept. 5, 2017, this action was consolidated with a separate action commenced against defendant Westchester County Health Care Corporation under the within index number. By Decision and Order entered July 30, 2018, plaintiff's claims against defendant Kai and Spielvogel were dismissed.

On or about May 30, 2018, plaintiffs served defendant Putnam Hospital with several discovery demands including a notice for discovery and inspection demanding, inter alia, daily quality assurance testing performed on the CT scanner utilized to administer the CT pulmonary angiogram on plaintiff Jamie-Ann Karlsson for the period of July 3 through July 10, 2013. Defendant Putnam Hospital objected to this demand on or about June 20, 2018. After depositions were concluded, plaintiff's counsel renewed his demand and a briefing schedule was issued for the underlying motion.

Plaintiffs argue that they are entitled to the production of the Daily Quality Assurance testing records from the CT scan machine used to perform the CT pulmonary angiogram on the plaintiff Jamie-Ann Karlsson for the period of July 3 through July 10, 2010. Plaintiffs argue, inter alia, that an "artifact" on the film led to a false finding of an aortic dissection which led to unnecessary open heart surgery. Thus, plaintiffs contend that the daily testing records for the specific machine utilized in producing the images with an "artifact" are sought in good faith and are relevant to their claims.

Defendant Putnam Hospital opposes the motion. Defendant argues that the plaintiffs are not entitled to the requested discovery because the complaint does not contain a claim for products liability nor does it plead general negligence claims against Putnam Hospital. Further, according to defendant, neither the bill of particulars nor the plaintiffs' supplemental bill of particulars alleged a products liability claim nor that the machine was malfunctioning or that there was a negligent administration of the machine. Further, defendant argues that plaintiffs have failed to introduce any testimony that there was an "artifact" on the images or that any "artifact" caused an alleged misdiagnosis.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is

one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

Here, the plaintiffs have failed to establish their entitlement to the relief sought. While counsel argues that the daily testing logs for the CT machine are relevant to their theory of liability that a possible "artifact" on the scan could have caused a misdiagnosis, plaintiffs have wholly failed to present any evidence in support of the existence of such an artifact. In fact, plaintiffs failed to elicit or present any testimony— from an expert witness or otherwise— that an "artifact" was present on any of the images in question. Moreover, while this theory of liability is raised in counsel's affirmation in support of this motion, he fails to offer any evidence, either in the form of testimony or a sworn affidavit, that an "artifact" was the cause of an alleged misdiagnosis. Moreover, defendant Putnam Hospital correctly argues that there is nothing in the plaintiffs' pleadings or bills of particulars to raise such a theory of liability. Despite the plaintiffs' arguments to the contrary, without establishing the existence of an "artifact", it is unclear on this motion why the records sought would be relevant to the claims pled by plaintiffs. Plaintiffs argument that daily testing logs were relevant because an artifact might have led to a misdiagnosis, without any testimony or evidence that an artifact was present on the scan is highly speculative and tantamount to a fishing expedition. Accordingly, there is nothing on the record before this court which demonstrates the relevance of the records sought by plaintiffs on this motion.

All other arguments raised and evidence submitted by the parties have been considered by this court notwithstanding the specific absence of reference thereto.

In light of the foregoing, it is

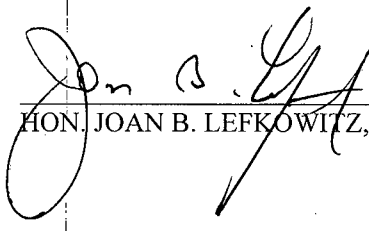
ORDERED that plaintiffs' motion is denied in its entirety; and it is further

ORDERED that a trial readiness order will be entered separately, herewith; and it is further

ORDERED that plaintiffs shall serve a copy of this decision and order, with notice of entry, upon defendants within five days of entry.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
March 12, 2019


HON. JOAN B. LEFKOWITZ, J.S.C.

To:

All counsel by NYSCEF

cc: Compliance Part Clerk