SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Norman Williams,

Plaintiff,

-against-

Project Renewal, Inc.,

Defendant.

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Index No. 152196/2018

Decision and Order

Mot. Seq. 2

HON. EILEEN A. RAKOWER, J.S.C.

Defendant Project Renewal, Inc., ("Defendant") moves for an Order pursuant to CPLR 3124 and 3126 dismissing the action based on Plaintiff Norman Williams' ("Plaintiff") failure to produce discovery. In the alternative, Defendant seeks an Order compelling Plaintiff to produce HIPAA compliant authorizations to allow Defendant to obtain Plaintiff's records. Plaintiff opposes.

Background

Plaintiff alleges he sustained personal injuries when he fell in the hallway of the 2nd floor of Defendant's Third Street Men's Shelter located at 8 East 3rd Street, New York, NY on or about July 30, 2016. Defendant states that it is "a New York City organization that provides services to homeless and low-income level men and women who often have a drug addiction and mental illness." Defendant states it also "provides substance abuse rehabilitation services." Defendant states that "[u]pon information and belief, plaintiff was receiving treatment with Defendant… at the time of the fall at issue."

Plaintiff alleges that as a result of his accident, he "suffered serious and severe personal injuries, both physical and mental, rendering him wholly and/or partially disabled and necessitating the employment of medical care and expenses; that some of the injuries sustained by the Plaintiff are permanent; that future medical expenses and other monetary losses will be incurred; that the injuries incapacitated the

Plaintiff in whole or in part, and upon information and belief, Plaintiff will be unable to pursue his various activities with the same degree of efficiency as prior to the occurrence of the accident." (Complaint, 17).

On March 15, 2019, Plaintiff served a Bill of Particulars which claims damages for injuries to the right shoulder, cervical and lumbar spine, "anxiety and mental anguish" "which have substantially prevented plaintiff from enjoying the normal fruits of social activities," and "lesser quality of life, including loss of enjoyment of life than the Plaintiff would have otherwise experienced, but for the injuries and conditions alleged herein."

On April 16, 2019, all parties appeared for a Preliminary Conference in this matter. The parties agreed and were directed to provide any opposing party statements and responses to all outstanding discovery demands within 30 days.

On July 31, 2019, Defendant's counsel sent Plaintiff's counsel a letter stating that his office had been informed that Defendant maintained records regarding Plaintiff. Defendant's counsel stated that Defendant was unable to disclose the records to his office absent a HIPAA compliant authorization allowing their release because they may contain information the mental health and substance abuse treatment that Plaintiff underwent at Defendant's facility.

Plaintiff, to date, has refused to provide a HIPPA complaint authorization allowing Defendant's counsel to obtain the records of their client.

Parties' Contentions

Defendant's counsel argues that "[i]n the matter at bar, plaintiff's counsel has refused to provide defense counsel with a duly executed HIPPA compliant authorization to obtain the records of *our own client* - defendant Project Renewal, Inc." Defendant argues that the records likely contain statement and information regarding the actual incident and are necessary to defend the action.

Defendant's counsel further argues that Plaintiff's substance abuse and mental health records may also contain information that is necessary to the defense of this matter. Defendant argues that Plaintiff's Bill of Particulars which asserts claims for "anxiety and mental anguish" and loss of enjoyment of life places Plaintiff's mental condition in controversy in this action. Defendant states "[t]his is especially so, as, the limited medical records received to-date reveal that plaintiff has a history of

being an intravenous or I.V. drug abuser, specifically abusing heroin - a highly addictive opioid drug made from Morphine a narcotic medication generally used to treat pain. (Exhibit G)." Defendant states that the "limited records received to-date reveal that plaintiff was using heroin, or at least had last used heroin, the same month as the fall at issue occurred." Defendant argues that based on the records, "it is reasonable to conclude that plaintiff was either under the effects of or withdrawing from heroin abuse at the time of the fall at issue." Defendant argues that therefore "to the extent that plaintiff was experiencing symptoms of either heroin use or heroin withdrawal at the time of the fall at issue, it is reasonable to conclude that the symptoms of the same may have caused or contributed to the fall at issue and/or plaintiff's alleged 'injuries' as a result of the same."

Plaintiff opposes the motion and states the governing authority on the issue is *Budano v Gurdon*, 97 A.D.3d 497 (1st Dept 2012).

Legal Standard

"A trial court is vested with broad discretion in its supervision of disclosure." *MSCI Inc. v Jacob*, 120 AD3d 1072, 1075 (1st Dept 2014). "There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: a party." CPLR 3101 (a) (1). The words "material and necessary" is to "be interpreted 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." *Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 (1968). "The test is one of usefulness and reason." *Id.* at 407.

In *Budano*, the plaintiff brought an action alleging that he slipped and fell in a building owned by the defendant. The defendant moved to compel the plaintiff to permit the release of his medical records relating to alcohol and drug treatment, and HIV-related information, if any. The plaintiff cross moved for a protective order preluding his production of his protected health information. The trial court granted the cross-motion. The First Department affirmed the trial court's decision, stating:

> [E]ven if defendant had established that plaintiff suffered from chemical dependency and mental illness and had HIV, the requested discovery would not be warranted. Defendant failed to submit an expert affidavit or any other evidence that would establish a connection between those

> conditions and the cause of the accident, nor did he make any effort to link those conditions to plaintiff's ability to recover from his injuries or his prognosis for future enjoyment of life (*see Del Terzo v. Hosp. for Special Surgery,* 95 A.D.3d 551, 944 N.Y.S.2d 79 [2012]; *Manley v. New York City Hous. Auth.,* 190 A.D.2d 600, 600–601, 593 N.Y.S.2d 808 [1993]). Without such support, "we are presented with nothing other than 'hypothetical speculations calculated to justify a fishing expedition'" (*Manley,* 190 A.D.2d at 601, 593 N.Y.S.2d 808).

Budano, 97 AD3d at 499.

Discussion

Here, based on the record presently before the Court, Defendant has failed to show evidence "that would establish a connection between" Plaintiff's alleged mental health, substance use, and substance abuse treatment and "the cause of the accident, nor did he make any effort to link those conditions to plaintiff's ability to recover from his injuries." *Budano*, 97 AD3d at 499. Therefore, Defendant has not established that it is entitled to Plaintiff's mental health and substance abuse records. Furthermore, to the extent that Defendant seeks records that contain statements or information concerning the incident such as an incident report, Defendant would already have access to the same outside of the medical file of Plaintiff.

Since this action is a slip and fall, and not one for medical malpractice, it does not belong in this Part and should be reassigned to a non-medical malpractice part.

Wherefore it is hereby

ORDERED that Defendant's motion is denied; and it is further

ORDERED that this slip and fall action should be reassigned to a non-medical malpractice Part.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: FEBRUARY 4, 2020

Eileen A. Rakower, J.S.C.