

Jordan v BBP St. Owner, LLC
2020 NY Slip Op 30584(U)
February 27, 2020
Supreme Court, New York County
Docket Number: 158867/2017
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

CHRISTOPHER JORDAN,
Plaintiff,

INDEX NO. 158867/2017

MOTION DATE N/A

MOTION SEQ. NO. 005

- v -

BBP ST OWNER, LLC, QUICK PARK PCVST GARAGE
LLC, PRECISION TIME SYSTEMS, INC. D/B/A PRECISION
TECHNOLOGY SOLUTIONS, INC., FAAC
INTERNATIONAL, INC.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

QUICK PARK PCVST GARAGE LLC
Plaintiff,

Third-Party
Index No. 595695/2018

-against-

PRECISION TECHNOLOGY SOLUTIONS, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 118, 119, 120, 128, 133, 134

were read on this motion for DISCOVERY

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

In this personal injury action, defendant/third-party plaintiff Quick Park PCVST Garage LLC (Quick Park) moves to compel plaintiff to provide complete responses to Quick Park's notice for discovery and inspection, dated June 19, 2019, by providing HIPAA authorizations unrestricted as to time allowing the release of records related to AIDs/HIV both prior to and after the date of plaintiff's accident, and to direct that plaintiff provide responses to deposition

questions with respect to his physical and mental conditions including AIDs/HIV and the treatment he received for same both prior to and after the date of plaintiff's accident. In opposition, plaintiff argues that Quick Park has not demonstrated a compelling need to obtain the requested discovery as required by Public Health Law § 2785.

Plaintiff's allegations in the instant matter involves cognitive disabilities, lost consciousness, post-concussion syndrome, concussion headaches, vision issues, vertigo, cognitive impairment, anxiety, mental anguish and memory loss. Plaintiff alleges that these ailments have left him totally disabled. In a bill of particulars, plaintiff alleges that as a result of the accident he is prevented from enjoying normal fruits of social activities and that the accident caused and/or contributed to plaintiff living a lesser quality of life.

CPLR 3101 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).

"It is well-settled that the waiver of the physician-patient privilege made by a party who affirmatively asserts a physical condition in its pleading does not permit discovery of information involving unrelated illnesses and treatments" (*Mcleod v. Metropolitan Transportation Authority*, 47 Misc3d 1219 [A]). However, "determining whether the physician-patient privilege is waived with respect to the medical records of a particular provider is a function of (1) the condition affirmatively placed at issue by the patient-party; and (2) whether the records sought are related to the condition affirmatively placed at issue" (*id.*).

In the matter at bar, Quick Park seeks HIPAA authorizations that are unrestricted as to time for the release of plaintiff's AIDs/HIV medical treatment. A court may grant an order for disclosure of confidential HIV related information upon an application showing a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding (Public Health Law § 2785). Of note, plaintiff previously waived his confidentiality by providing certain authorizations to Quick Park that disclosed his AIDs/HIV history in an earlier discovery exchange. Plaintiff, moreover, has waived his physician-patient privilege generally for purposes of this litigation by alleging that, as a result of the accident, he is prevented from enjoying normal fruits of social activities and that the accident caused and/or contributed to his living a lesser quality of life. By alleging this, plaintiff has placed his medical history at issue in this action. "By pleading loss of enjoyment of life or future lost wages or lost earning capacity based on permanent, disabling physical injuries, the plaintiff would be deemed to have waived the physician-patient privilege for his or her entire medical history" (*Mcleod v. Metropolitan Transportation Authority*, 47 Misc3d 1219 [A]). To the extent an enhanced standard must be met, as required by Public Health Law § 2785, Quick Park has met such burden. Plaintiff's assertion of the loss of enjoyment of life placed his medical history at issue and said history needs to be assessed in the context of his AIDs/HIV diagnosis and the potential complications that flow therefrom.

Quick Park has failed on this motion to annex its deposition questions and plaintiff's responses to said questions. The court is unable to make a determination on the appropriateness of the deposition questions and responses in a vacuum -- and, as such, Quick Park has failed to satisfy its burden in connection with that aspect of this motion.

Accordingly, it is

ORDERED that the portion of defendant/third-party plaintiff Quick Park PCVST Garage LLC's motion seeking to compel plaintiff to provide complete responses to Quick Park's notice for discovery and inspection, dated June 19, 2019, by providing HIPAA authorizations unrestricted as to time allowing the release of records related to AIDs/HIV both prior to and after the date of plaintiff's accident, is granted; and it is further

ORDERED that the portion of defendant/third-party plaintiff Quick Park PCVST Garage LLC's motion seeking to compel plaintiff to provide responses to deposition questions is denied; and it is further

ORDERED that, within 30 days of the date of this order, plaintiff is directed to provide HIPAA authorizations unrestricted as to time allowing the release of plaintiff's records related to AIDs/HIV both prior to and after the date of plaintiff's accident.

This constitutes the Decision and Order of the court.

2/27/2020
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE