

Nelson v Taha Assoc., Inc.

2020 NY Slip Op 31903(U)

March 27, 2020

Supreme Court, New York County

Docket Number: 157959/2013

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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ANTHONY NELSON,

Index No. 157959/2013

Plaintiff

- against -

DECISION AND ORDER

TAHA ASSOCIATES, INC.,

Defendant

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LUCY BILLINGS, J.S.C.:

In an order dated March 28, 2019, the court granted a cross-motion by defendant to compel disclosure to the extent of ordering plaintiff to produce the authorizations for release of records sought in defendant's correspondence to plaintiff dated March 25, 2019, upon defendant's payment of \$250.00 to plaintiff's attorney for the duplication of 27 authorizations previously provided to defendant's former attorney. C.P.L.R. §§ 3124, 3126. Defendant now moves for penalties because, after paying plaintiff's attorney the \$250.00, defendant still has not received all the authorizations. C.P.L.R. § 3126(3). Plaintiff now objects to providing authorizations for records from the Bronxdale Summer Basketball League, the Richmond Redevelopment and Housing Authority, Verizon Legal Compliance, and the Virginia Department of Corrections, claiming that their records are unrelated to the injury of which he complains. As reflected in the order dated March 28, 2019, however, when defendant previously cross-moved to compel authorizations for these records, plaintiff did not dispute that the records are material to defendant's defense of

plaintiff's claims, and the order encompasses these authorizations. On the other hand, the order does not encompass the authorizations for records from Amida Care, Harlem Hospital & Radiology, Lenox Hill Radiology, St. Joseph's Hospital & Radiology, S&B Pharmacy, and Marlene Taylor M.D. that defendant seeks.

Plaintiff has provided to defendant's current attorney authorizations for records from Emergency Medical Care, Gramercy Drugs, Raphael Drug & Health, and St. Luke's Roosevelt Hospital at their last known addresses. Since the first three of these entities are no longer in business and are without forwarding addresses through no fault of plaintiff, no further remedy is available, nor does defendant suggest one, and no penalty is warranted. Plaintiff and defendant both shall investigate and confer whether St. Luke's Roosevelt Hospital now conducts business under another name at the same address. If so, plaintiff shall provide an authorization for records from that entity.

Plaintiff also has provided to defendant's current attorney an authorization for records from Raymond Wedderburn M.D. at Mt. Sinai Roosevelt West and from Federal Occupational Health. Since plaintiff is unfamiliar with the latter entity, he is unaware of any claim number that entity has assigned to him. If defendant provides plaintiff sufficient information for him to request his claim number, he shall do so and, upon receipt of any claim number, provide it to defendant with his authorization. Again no further remedy is available, nor does defendant suggest one, and no penalty is warranted.

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Beside the supplemental information relating to St. Luke's Roosevelt Hospital and Federal Occupational Health to be provided if and when received, plaintiff shall provide to defendant authorizations for records from the Bronxdale Summer Basketball League, the Richmond Redevelopment and Housing Authority, Verizon Legal Compliance, and the Virginia Department of Corrections within 20 days after entry of this order. C.P.L.R. §§ 3120(1)(i) and (2), 3124. If he fails to provide an authorization for records from the Bronxdale Summer Basketball League, he shall be precluded from offering evidence that the injury of which he complains has restricted him from playing basketball. C.P.L.R. § 3126(2); Gibbs v. St. Barnabas Hosp., 16 N.Y.3d 74, 82-83 (2010); Northway Eng'g v. Felix Indus., 77 N.Y.2d 332, 335 (1991); Garcia v. Defex, 59 A.D.3d 183, 183-84 (1st Dep't 2009); Rosa v. New York City Tr. Auth., 55 A.D.3d 344, 345 (1st Dep't 2008).

Because defendant nowhere indicates why the records from the Richmond Redevelopment and Housing Authority, Verizon Legal Compliance, and the Virginia Department of Corrections are material, it is impossible to fashion a comparable remedy for the failure to provide authorizations for these entities' records. Plaintiff's deposition testimony shows that the Richmond Redevelopment and Housing Authority and the Virginia Department of Corrections employed plaintiff during 1975-82, and the authorizations to defendant's former attorney for these employers specified medical and employment records, but plaintiff's testimony does not indicate any injuries during this employment, and his bills of particulars do not claim lost wages. If plaintiff fails to provide authorizations for records from the

Richmond Redevelopment and Housing Authority, Verizon Legal Compliance, or the Virginia Department of Corrections as ordered above, defendant may move for further penalties. C.P.L.R. § 3126(1) and (2).

In any event, defendant nowhere indicates how any of the authorizations plaintiff still is required to provide bears on defendant's liability, rather than plaintiff's damages. Therefore the outstanding authorizations do not constitute grounds to extend the time to move for summary judgment. C.P.L.R. § 3212(a); Andron v. City of New York, 117 A.D.3d 526, 526 (1st Dep't 2014); Jimenez v. Haros, 39 A.D.3d 437, 437 (1st Dep't 2007); Pena v. Women's Outreach Network, Inc., 35 A.D.3d 104, 108 (1st Dep't 2006); Espejo v. Hiro Real Estate Co., 19 A.D.3d 360, 361 (1st Dep't 2005). See Appleyard v. Tigges, 171 A.D.3d 534, 536 (1st Dep't 2019); Kenny v. Turner Constr. Co., 155 A.D.3d 479, 480 (1st Dep't 2017); Burbridge v. Soho Plaza Corp., 150 A.D.3d 513, 513 (1st Dep't 2017); Waxman v. Hallen Constr. Co., Inc., 139 A.D.3d 597, 598 (1st Dep't 2016).

In sum, the court grants defendant's motion for penalties only to the extent specified above. Plaintiff shall provide to defendant authorizations for records from the Bronxdale Summer Basketball League, the Richmond Redevelopment and Housing Authority, Verizon Legal Compliance, the Virginia Department of Corrections, and any successor to St. Luke's Roosevelt Hospital and his claim number at Federal Occupational Health if he obtains that information as specified above. C.P.L.R. § 3124. The conditional penalty will be effective automatically under the circumstances specified above.

C.P.L.R. § 3126(2). The court denies all other relief sought by defendant. C.P.L.R. §§ 2004, 3126(3), 3212(a).

DATED: March 27, 2020

Lucy Billings

LUCY BILLINGS, J.S.C.

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