

<b>Abbasi v United Parcel Serv.</b>
2020 NY Slip Op 31976(U)
May 6, 2020
Supreme Court, Queens County
Docket Number: 704883/2017
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK — QUEENS COUNTY**  
**PRESENT: GEORGE J. SILVER PART TSP**  
*Justice*

AMIR ABBASI,

Index No. 704883/2017  
Motion Seq. No. 006 & 007

Plaintiff,

- v -

**DECISION & ORDER**

UNITED PARCEL SERVICE and MICHAEL  
JOHN BOBBY,

Defendants.

**Cross-Motion:**  **Yes**  **No**

Defendants MICHAEL JOHN BOBBY (“Mr. Bobby”) and UNITED PARCEL SERVICE (“UPS” collectively “defendants”) move<sup>1</sup> for an order directing a unified trial of this action on the issues of liability and damages. Plaintiff AMIR ABBASI (“Mr. Abbasi”), by way of plaintiff DANIYAL ZAMAN’s (“Mr. Zaman”) counsel, opposes the motion. Indeed, Mr. Zaman cross-moves for an order, pursuant to CPLR §603, severing the action under Index No. 707195/2016<sup>2</sup> from the two remaining actions under index numbers 704883/2017 and 708503/2016<sup>3</sup> on the issue of damages.

Defendants also move for an order,<sup>4</sup> pursuant to CPLR § 3402 and 22 N.Y.C.R.R. § 202.21(d), permitting defendants to conduct post-note of issue discovery, and staying the trial of this matter pending the completion of the requested discovery. Additionally, defendants move,

<sup>1</sup> Motion Seq. No. 006.

<sup>2</sup> In this action, Daniyal Zaman sues Michael Bobby, United Parcel Service General Services Co., Amir Abbasi, NYC Car & Limousine Corp., Michael John Bobby, and United Parcel Service.

<sup>3</sup> In this action, Mr. Haris Zaman, Mr. Khan, and Mr. Nazir sue Mr. Bobby, UPS, Mr. Abbasi, and NYC Car.

<sup>4</sup> Motion Seq. No. 007.

pursuant to CPLR §§ 3101(a) and 3124, compelling Mr. Abbasi to produce outstanding discovery, or alternatively, pursuant to CPLR §3126, precluding Mr. Abbasi from offering testimony at trial with respect to his alleged narcotics addiction as well as the testimony of Dr. Ali Guy (“Dr. Guy”). Mr. Abbasi opposes the motion.<sup>5</sup>

This personal injury lawsuit arises out of a motor vehicle accident that occurred on February 18, 2016, involving Mr. Abbasi and Mr. Bobby. Plaintiffs, Mr. Zaman, Haris Zaman (“Mr. H. Zaman”), Dilwar Khan (“Mr. Khan”), and Sufyan Nazir (“Mr. Nazir” collectively “plaintiffs”) were passengers in the vehicle operated by Mr. Abbasi. Mr. Abbasi sued Mr. Bobby and UPS, his employer, under various theories of negligence for personal injuries he sustained as a result of the accident.

Pursuant to the orders of the Hon. Leslie J. Purificacion and the Hon. Laura Douglas, the three actions were consolidated for a joint trial. On or about December 5, 2017, Mr. Zaman filed a note of issue. On or about July 12, 2018, Mr. Abbasi filed a note of issue.

Defendants argue that the key liability issue in this case involves questions of physics and the dynamics of force with respect to plaintiffs’ alleged injuries. According to defendants, the force exerted upon plaintiffs’ bodies as a result of the subject accident was inconsistent and biomechanically insufficient to cause plaintiffs’ alleged injuries. According to defendants, an expert is necessary to testify as to the biomechanical forces, and the effects of these forces when two vehicles come into contact at certain angles, speeds, and points of impact.

In that regard, defendants highlight that their expert, David E. Raymond, Ph.D., P.E. (“Dr. Raymond”), will testify as to, *inter alia*, a vehicle collision analysis, “the biomechanics of the human body motion and injury,” and his computer simulations and models depicting the subject

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<sup>5</sup> While Mr. Abbasi opposes Motion Seq. No. 007, Mr. Abbasi’s opposition only pertains to defendants’ application for a unified trial (Motion. Seq. No. 006).

accident. Specifically, defendants aver that based on Dr. Raymond's review and reliance on the accident reconstruction analyses from Delta-V Forensic Engineering, Dr. Raymond will testify that the accident as alleged cannot be the proximate cause of plaintiffs' alleged injuries because the force of the collision could not have caused plaintiffs' alleged spinal injuries and conditions. As such, defendants maintain that Dr. Raymond will use this data and information to formulate and explain his opinions, which pertain to the damages in this matter.

In opposition, Mr. Zaman<sup>6</sup> argues that a personal injury action sounding in negligence typically calls for separate trials on the issues of liability and damages. Mr. Zaman also asserts that a unified trial does not "make sense" here because he was a passenger in one of the vehicles, and therefore, "nothing about his injuries could possibly inform any question of liability."

In his cross-motion, Mr. Zaman argues that the court should sever his action from the remaining actions on issue of damages. According to Mr. Zaman, there is a predominance of individual issues such as the parties' "significantly different medical histories," the potential for juror confusion, and a possibility of prejudice due to a "comparative review of the claims."

In reply, defendants reiterate their prior arguments. In opposition to Mr. Zaman's cross-motion, defendants argue that the claims arise out of the same transaction or occurrence—namely, the same motor vehicle accident that occurred on February 18, 2016. As such, defendants proffer that a joint trial would promote judicial efficiency and economy, and avoid inconsistent verdicts.

As to defendants' motion under sequence number 007, defendants assert that Mr. Abbasi alleges that he sustained cervical and lumbar disc bulging as a result of the accident. However, defendants submit that Mr. Abbasi's bill of particulars does not mention any narcotic medication addiction, or that Mr. Abbasi attended a detox facility to treat his alleged addiction.

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<sup>6</sup> While Mr. Zaman is not a party in this action, Mr. Zaman's counsel nonetheless opposes the motion on behalf of Mr. Abbasi.

Defendants contend that on or about August 19, 2019, 24 days before trial, Mr. Abbasi served defendants with an expert exchange pursuant to CPLR § 3101(d) and a notice of medical exchange, which disclosed for the first time Dr. Guy. Defendants point out that Dr. Guy will testify that Mr. Abbasi “was addicted to narcotic medications as a result of his chronic pain syndrome and he went to a detox facility and got himself detoxed off these narcotic medications.” In that regard, defendants highlight that they were not provided with authorizations or records related to Mr. Abbasi’s treatment for his alleged addiction to narcotic medications. Defendants also note that Mr. Abbasi never testified to a narcotic medication addiction resulting from chronic pain syndrome during his deposition, or that he attended a detox rehabilitation facility. As such, defendants posit that they are entitled to a further deposition and independent medical examination of Mr. Abbasi.

Mr. Abbasi’s only opposition to defendants’ motion pertains to defendants’ request for a unified trial.<sup>7</sup> Mr. Abbasi argues that the dynamics of force, and whether “such forces” could proximately cause plaintiffs’ alleged injuries have no relevance as to the issue of liability in this action. Mr. Abbasi also avers that defendants failed to show how Dr. Raymond’s proposed testimony regarding the nature of plaintiffs’ injuries will assist the jury in determining liability. Specifically, Mr. Abbasi underscores that defendants have not shown how the nature of plaintiffs’ injuries would have any bearing on which party/parties caused the alleged accident.

Mr. Abbasi further argues that his action should be severed from the other actions so that he may have a separate trial on the issue of damages.<sup>8</sup>

In reply, defendants argue that a bifurcated trial will waste the court’s resources as it will duplicate the testimony of both fact and expert witnesses. Defendants contend that their experts

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<sup>7</sup> It is unclear whether Mr. Abbasi filed his opposition under the incorrect motion sequence number.

<sup>8</sup> The remainder of Mr. Abbasi’s argument is similar, if not identical, to his prior cross-motion filed under index number 707195/2016 (Motion Seq. No. 010). This motion has already been heard and decided by the court.

will have to testify at multiple trials as a discussion of liability would be required in the damages portion of trial. The remainder of defendants' reply summarizes defendants' prior arguments.

## DISCUSSION

### **I. Motion Seq. No. 006**

“[W]here the nature of the plaintiff's injuries has an important bearing on the question of liability, a unified trial should be held” (*Carbocci v. Lake Grove Entm't, LLC*, 64 A.D.3d 531, 532 [2d Dept. 2009]). “The party opposing bifurcation has the burden of showing that the nature of the injuries necessarily assists the factfinder in making a determination with respect to the issue of liability” (*id.*). “Evidence of injuries may be admitted at a trial on the issue of liability if the cause of the injuries is inextricably intertwined with the extent of the injuries” (*Naumann v. Richardson*, 76 A.D.2d 917, 917–18 [2d Dept. 1980] [citations omitted]).

Recently, the Appellate Division, Second Department has ruled that, “[B]ifurcation of the trial of personal injury cases is not absolutely required in the Second Department, and trial courts should use their discretion in determining, in accordance with the statewide rule, whether bifurcation will assist in clarifying or simplifying the issues and in achieving a fair and more expeditious resolution of the action” (*Castro v. Malia Realty, LLC*, 177 A.D.3d 58, 60 [2d Dept. 2019]).

Here, a unified trial is warranted on the issues of liability and damages. As defendants correctly argue, there is a question as to whether the accident as alleged was “biomechanically capable” of causing plaintiffs' alleged injuries. Indeed, as defendants will proffer evidence that the force, movement, speed, and trajectories of the vehicles could not have proximately caused plaintiffs' alleged injuries, the nature and extent of plaintiffs' alleged back/spinal injuries may be informative as to the cause of the alleged collision. Accordingly, because the nature of plaintiffs'

injuries is “inextricably intertwined” with the dynamics of the alleged accident, a unified trial is necessary to assist the jury in determining the issue of liability (*Castro*, 177 A.D.3d at 60, *supra*; *Carbocci*, 64 A.D.3d at 532, *supra* [granting a unified trial where, “Evidence relating to Carbocci’s injuries is probative in determining how the incident occurred.”]; *Naumann*, 76 A.D.2d at 918, *supra* [granting a unified trial where, “The exclusion of evidence of injuries to passengers on the bus was reversible error in that such evidence had a direct bearing on the force of the impact and the relative speed of the vehicles involved.”]).

Mr. Zaman’s cross-motion to sever his action (Index No.707195/2016) from the remaining actions on the issue of damages is denied. In deciding this very issue previously in connection with the separately-filed related actions, the court declined to sever Mr. Zaman’s action on the issue of damages (*see*, Index No. 707195/2016, Motion Seq. No. 010). In that decision, the court ordered that the three actions shall proceed as consolidated for joint trial. The court sees no reason to disturb its prior holding, and therefore, declines to grant Mr. Zaman’s identical request here.

## II. Motion Seq. No. 007

22 N.Y.C.R.R. §202.21(d) “permits the court to authorize additional discovery ‘[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness’ that would otherwise cause ‘substantial prejudice’” (*Schroeder v. IESI NY Corp.*, 24 A.D.3d 180, 181 [1st Dept. 2005]).

CPLR §3101 mandates “full disclosure of all matters that are material and necessary.” Parties to an action are entitled to reasonable discovery “of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity” (*Fell v. Presbyterian Hosp. in City of New York at Columbia-Presbyterian Med. Ctr.*, 98 A.D.2d 624, 625 [1st Dept. 1983]). CPLR § 3124 allows a party to compel disclosure when a

person has failed to comply with a request, notice, interrogatory, demand, question or order. CPLR §3126 gives courts the discretion to impose penalties including dismissal, upon parties who willfully fail to disclose information which the court orders to be disclosed. “A court may, *inter alia*, issue an order ‘striking out pleadings or ... rendering a judgment by default’ as a sanction against a party who ‘refuses to obey an order for disclosure or wilfully [sic] fails to disclose information which the court finds ought to have been disclosed’” (*Argo v. Queens Surface Corp.*, 58 A.D.3d 656, 656 [2d Dept. 2009]; *see also, Schwartz v. Suebsanguan*, 15 A.D.3d 565, 566 [2d Dept. 2005]; *Rowell v. Joyce*, 10 A.D.3d 601 [2d Dept. 2004]).

Here, because Mr. Abbasi has failed to disclose information pertaining to his alleged addiction to narcotic medications, and treatment with respect to the same, Mr. Abbasi cannot assert such claims. Notably, Mr. Abbasi’s bill of particulars does not mention any injuries related to an addiction to narcotic medications, or that he underwent treatment for addiction. Moreover, Mr. Abbasi’s belated disclosure 24 days before trial is antithetical to the discovery process as it improperly infringes on defendants’ entitlement to discovery pertaining to Mr. Abbasi’s claimed injuries (*see, e.g., Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d 74, 83 [2010] [“[L]itigation cannot be conducted efficiently if deadlines are not taken seriously, and we make clear again, as we have several times before, that disregard of deadlines should not and will not be tolerated”]; *Rassaei v. Kessler*, 252 A.D.2d 577 [2d Dept. 1998]; *Mercado v. Trabman*, 164 Misc. 2d 339, 340 [1st Dept. 1995]).

Accordingly, as this case is pending on the trial calendar, and because defendants have not been allotted an opportunity to conduct discovery with respect to Mr. Abbasi’s recently disclosed claims, Mr. Abbasi is precluded from presenting evidence at trial related to his alleged addiction to narcotic medications, or treatment as to the same. It therefore follows that defendants’

application to conduct post-note of issue discovery, and to stay the trial of this matter pending the completion of discovery is denied as moot.

Mr. Abbasi’s application to sever his action from the remaining actions is procedurally improper,<sup>9</sup> as this court has already heard and decided this very application in connection with the separately-filed related actions (*see*, Index No. 707195/2016, Motion Seq. No. 010). Accordingly, Mr. Abbasi’s application is denied.

Based on the foregoing, it is

ORDERED that MICHAEL JOHN BOBBY and UNITED PARCEL SERVICE’s application for an order directing a unified trial of this action on the issues of liability and damages is GRANTED; and it is further

ORDERED that DANIYAL ZAMAN’s cross-motion for an order to sever the action under index number 707195/2016 from the two remaining actions on the issue of damages is DENIED; and it is further

ORDERED that MICHAEL JOHN BOBBY and UNITED PARCEL SERVICE’s application to conduct post-note of issue discovery, and to stay the trial of this matter pending the completion of the requested discovery is DENIED; and it is further

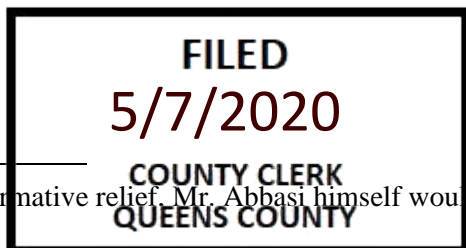
ORDERED that MICHAEL JOHN BOBBY and UNITED PARCEL SERVICE’s application to compel Mr. Abbasi to produce outstanding discovery is DENIED; and it is further

ORDERED that MICHAEL JOHN BOBBY and UNITED PARCEL SERVICE’s application to preclude Mr. Abbasi from offering testimony at trial with respect to his alleged narcotics addiction as well as the testimony of Dr. Guy is GRANTED; and it is further

ORDERED that the parties are directed to appear for a virtual or in-person conference before the court (the parties will be further notified of the conferencing approach in advance of the designated date) on June 26, 2020 (time to be determined).

This constitutes the decision and order of the court.

Dated: 5-6-2020



*George J. Silver*  
HON. GEORGE J. SILVER

<sup>9</sup> To properly request affirmative relief, Mr. Abbasi himself would have had to move by way of cross-motion.