

Greenspan v Stand-Up MRI of Manhattan, P.C.

2020 NY Slip Op 32277(U)

July 9, 2020

Supreme Court, New York County

Docket Number: 805369/2016

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

LLOYD GREENSPAN,

INDEX NO. 805369/2016

Plaintiff,

MOTION DATE

- against-

MOTION SEQ. NO. 3

MOTION CAL. NO.

**STAND-UP MRI OF MANHATTAN,
P.C., RON MARK, M.D., RYC ORTHOPAEDICS,
P.C., CRAIG CAPECI, M.D.,
MURRAY HILL MEDICAL GROUP, P.C.,
ALAN PINYAVAT, M.D., PRADEEP PENTA, M.D.,
ALEC S. GOLDENBERG, M.D.,
NYU HOSPITALS CENTER, and MICHAEL L. SMITH, M.D.,**

Defendants.

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ..

Answer — Affidavits — Exhibits

Replying Affidavits

Defendant, Stand-Up MRI of Manhattan, P.C. (“Stand-Up MRI”), moves for an Order granting a protective order so that Stephen Hershowitz, M.D. (“Dr. Hershowitz”) is not compelled to testify at an examination before trial in this action and vacating the Notice to Take Deposition on Oral Examination of Dr. Hershowitz, dated April 28, 2020. Stand-Up MRI submits the attorney affirmation of Robert Devine, Esq. (“Mr. Devine”) in support of the motion, which is dated May 12, 2020, and the affirmation of Dr. Hershowitz, dated May 12, 2020. Plaintiff Lloyd Greenspan (“Plaintiff”) opposes the motion.

Factual Background

Plaintiff alleges that he sustained serious personal injuries as the result of negligence and medical malpractice of Stand-Up MRI and physicians and a hospital involved in his treatment thereafter.

An MRI of Plaintiff's cervical spine was taken on or about October 3, 2014 and interpreted by Ron Mark, M.D. ("Dr. Mark"), a radiologist trained in diagnostic radiology with a fellowship in MRI, on behalf of Stand-Up MRI. Dr. Mark's services were performed in one of his two private offices on Long Island, New York. Dr. Mark interpreted the MRI and prepared a report setting forth his findings. Plaintiff ultimately became paralyzed and was unable to walk and had limited use of his right hand and further impairment of the use of both arms.

Plaintiff filed a Summons and Complaint on September 15, 2016. Stand-Up MRI filed an Answer on January 31, 2017. On January 25, 2017, Plaintiff served a Bill of Particulars.

Mr. Devine states that depositions of Plaintiff and Dr. Mark have taken place. Dr. Mark testified that he did not report that the findings of Plaintiff's MRI were suggestive of a tumor in his 10/6/2014 report. Dr. Mark also testified that it was not a departure that the tumor was not reported.

Mr. Devine states that, "At no time was there a request for or an Order for the deposition of Stand-Up MRI of Manhattan, P.C., which would be vicariously liable for its employee, Dr. Mark."

On April 28, 2020, a Notice to Take Deposition was served upon Dr. Hershowitz. Dr. Hershowitz is the sole shareholder of Stand-Up MRI of Manhattan, PC, and other Stand-Up MRI facilities located in the New York-Long Island Metropolitan area. Dr. Hershowitz states, "I have no personal knowledge of any of the events in connection with the interpretation of an MRI of the cervical spine of the plaintiff, Lloyd Greenspan, which was performed on October 6, 2014, by Ron Mark, M.D. at one of his own offices on Long Island through teleradiology done on behalf of Stand-Up MRI of Manhattan, P.C." Dr. Hershowitz states, "Dr. Mark was and is a board certified radiologist in diagnostic radiology and had a one year fellowship in MRI at the time he performed his services in connection with that MRI of the cervical spine." Dr. Hershowitz states, "Dr. Mark, with those qualifications, performed those services individually and did not require, nor did he

receive, any supervision in the performance of his services.” Dr. Hershowitz further states, “Other than being shareholder of the corporation, I had no familiarity or knowledge of the patient or the performance of those services by Dr. Mark.”

Mr. Devine states that on May 1, 2020, he received a request from Plaintiff’s attorney for a copy of the declaration sheet for the insurance policy that covered Stand-Up MRI for Plaintiff’s claim. Mr. Devine states that he sent the declaration sheet, and a few days later, Plaintiff’s attorney requested page 2 of the declaration sheet and a copy of the insurance policy itself. Mr. Devine states, “A copy of the declarations sheet, which is in two pages and the full insurance policy covering the incident involving Mr. Greenspan will be furnished to the Court, upon request.”

In the pending motion, Stand-Up MRI argues that Dr. Hershowitz should not be compelled to testify because he “a non-party ... shareholder of Stand-Up MRI of Manhattan, P.C., has no personal knowledge of the facts involving the taking, the interpreting and the reporting of the MRI of the plaintiff’s cervical spine; and the terms of the insurance contract speak for themselves.”

In opposition, Plaintiff’s attorney Michael A. Fruhling, Esq. (“Mr. Fruhling”) contends that Dr. Hershowitz’s deposition is necessary “to ferret out the insurance available to indemnify both Defendant, STAND-UP MRI OF MANHATTAN, P.C., and its employee, Defendant, RONALD MARK, M.D.” Plaintiff contends that one million dollars in insurance coverage has been disclosed at the present time. Plaintiff states that Stand-Up MRI has multiple locations and Plaintiff needs to understand what coverage is afforded to the Defendants. Further, Plaintiff contends that “the declaration page submitted in response to Plaintiff’s demand for insurance information, lists Stephen M. Hershowitz, M.D., as the insured and not Defendant, STAND-UP MRI OF MANHATTAN, P.C.” Plaintiff argues that that Dr. Hershowitz’s deposition is therefore “material and necessary.” Plaintiff’s attorney also states that the deposition can be done remotely and will take less than two hours to complete.

In Stand-Up MRI’s reply, Mr. Devine states that “Dr. Mark’s attorney has already submitted a statement that Dr. Mark is covered by an independent policy of insurance issued by MedPro Insurance Company with coverage of \$1,000,000.” Mr. Devine states that the declaration sheet that was provided to Plaintiff’s attorney “indicates a policy of insurance with limits of \$1,000,000 issued by Capitol Specialty Insurance Corporation [which] has limits for each incident of \$1,000,000” and that Dr. Hershowitz, Stand-Up MRI’s sole shareholder, is the

named insured. Mr. Devine states that Mr. Fruhling omits that a copy of the insurance policy itself was sent to his partner Mr. Korek on May 5, 2020. Mr. Devine contends that Mr. Fruhling “knows exactly what the insurance coverage is and that Stand-Up MRI of Manhattan, P.C. is listed as an assured (sic) in that policy,” and “that the policy has a limit of \$1,000,000 for any one claim for injury.” Mr. Devine states, “Stand-Up MRI of Manhattan, P.C. has one location which unexpectedly, is in Manhattan,” and “[t]here are other Stand-Up MRI corporations with different names and different locations with the name based on the location, each of which is separate and independent.” Mr. Devine states that Mr. Fruhling “can read the policy and learn the extent of the coverage, that there is a limit to one injured party, and Stand-Up MRI of Manhattan, P.C. is an assured (sic) under the policy.” Mr. Devine states that “the policy speaks for itself” and “[t]here is no reason that Dr. Hershowitz has to testify as to the interpretation of the insurance policy, nor should he have to testify about other Stand-Up MRIs which are separate corporations, which have nothing to do with this case.”

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” . . . must 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) However, discovery demands for ‘any and all’ information may be overbroad and inappropriate. (*see Kantor v Kaye*, NYS2d 42, 43 [1st Dept 1985].)

CPLR § 3103(a) provides that a protective order may be warranted in order “to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

Discussion

Plaintiff is entitled to a limited deposition of Dr. Hershowitz concerning the terms of the insurance policy so that Plaintiff can understand the insurance

coverage afforded to Stand-Up MRI and Dr. Mark. Stand-Up MRI's motion for a protective order is therefore denied.

Wherefore, it is hereby

ORDERED that the motion for a protective order is denied; and it is further

ORDERED that Stephen Hershowitz, M.D., shall appear for a limited deposition on the issue of the insurance coverage afforded to Defendant Stand-Up MRI of Manhattan, P.C., for Plaintiff's claim within 30 days from the date of this Order. The deposition shall be conducted remotely.

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

ENTER: 
_____ J.S.C.

HON. EILEEN A. RAKOWER

Dated: JULY 9, 2020