

Alisahadeo v West Harlem Group Assistance, Inc.
2020 NY Slip Op 32325(U)
July 17, 2020
Supreme Court, New York County
Docket Number: 157590/2019
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

SHAREEFA ALISAHADEO,

Plaintiff,

- v -

WEST HARLEM GROUP ASSISTANCE, INCORPORATED,
FIRST WHGA DEVELOPMENT ASSOCIATES, L.P., THE
CITY OF NEW YORK, THE NEW YORK CITY HOUSING
PRESERVATION DEPARTMENT

Defendant.

-----X

INDEX NO. 157590/2019

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84 were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this personal injury action, plaintiff Shareefa Alisahadeo moves, pursuant to CPLR 3025, to amend the complaint to name WHGA Garvey Housing Development Fund Company, Inc. as an additional defendant. The motion is unopposed. Defendants West Harlem Group Assistance, Inc. and WHGA Development Associates, L.P. cross-move, pursuant to CPLR 3126, to strike the complaint due to plaintiff's failure to provide discovery or, in the alternative, pursuant to CPLR 3124 for an order compelling plaintiff to provide discovery. Plaintiff opposes the cross motion. After considering the parties' contentions, and after a review of the relevant statutes and case law, the motion and cross motion are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

This case arises from an incident on September 10, 2018 in which plaintiff was allegedly injured when part of the ceiling of her apartment, located at 1459 Amsterdam Avenue, New York, New York, apartment 4A (“the premises”), fell and struck her in the head. Doc. 1; Doc. 49 at par. 15. Plaintiff commenced this action against West Harlem Group Assistance, Inc. (“West Harlem”), WHGA Development Associates, L.P. (“Development”), the City of New York (“the City”), and the New York City Housing Preservation Department (“HPD”) by filing a summons and complaint on August 5, 2019. Doc. 1. In the complaint, plaintiff alleged that she was injured as a result of the negligence of the defendants, which owned, operated, maintained, and/or controlled the premises. *Id.*

West Harlem and Development joined issue by their answer filed September 20, 2019. Doc. 7.¹ Concomitantly with their answer, West Harlem and Development served a set of combined discovery demands in which they sought, inter alia, a bill of particulars and medical, employment, and collateral source record authorizations. Docs. 9, 57. The demand for an employment record authorization sought records from two years before the accident until the present. *Id.* Said defendants also sought an authorization for Medicare and Medicaid records. Doc. 12.

On or about November 11, 2019, plaintiff served her response to West Harlem and Development’s discovery demands. In her bill of particulars, plaintiff alleged that, as a result of the incident, she sustained, inter alia, head trauma, a concussion, headaches and dizziness, cervical spondylosis with radiculopathy, narrowing and stenosis of the cervical spine, and exacerbation of

¹ In lieu of answering, the City and HPD moved, pursuant to CPLR 3211 (motion sequence 001), to dismiss the complaint and all cross claims against them. Doc. 23. That motion was withdrawn when plaintiff, West Harlem, and Development stipulated to discontinue their respective claims against the City and HPD. Docs. 68-69. This also resulted in this action being transferred to Part 2, a non-City part. Doc. 70.

a previously asymptomatic cervical spine injury. Doc. 58 at par. 25. Plaintiff also claimed that she was treated by the following medical providers for her injuries: Mount Sinai St. Luke's Hospital, Columbia University Department of Rehabilitation and Regenerative Medicine, Fernando Bobis, M.D., Theradynamics Physical Rehabilitation, and NYP/Columbia University Medical Center. Doc. 58 at par. 21. Plaintiff provided with her response duly executed authorizations for the release of the records of Mount Sinai St. Luke's Hospital, "Samuel Rosenberg M.D. Rehabilitation Regenerative", Fernando Bobis, M.D., Theradynamics Physical Rehabilitation, and "NYP Columbia Med. Ctr. Vanderbilt Clinic". Doc. 59. All of the foregoing authorizations were restricted in time from the date of the accident to the present. Doc. 59. Plaintiff also provided West Harlem and Development with medical records from Mount Sinai St. Luke's Hospital, Dr. Rosenberg of Columbia University Department of Rehabilitation and Regenerative Medicine, Dr. Bobis, Theradynamics Physical Rehabilitation, and NYP/Columbia University Medical Center Vanderbilt Clinic. Doc. 59.

By correspondence to plaintiff's counsel dated November 14, 2019, counsel for West Harlem and Development rejected plaintiff's response on the ground that it was not sufficiently responsive to their demands. Doc. 60. Plaintiff's counsel responded the same day, maintaining that plaintiff had responded to all relevant demands. Doc. 61.

On December 19, 2019, plaintiff served a supplemental discovery response containing her 50-h hearing transcript. Doc. 62. At that hearing, plaintiff testified that she experienced neck pain prior to her accident, for which she was treated by Dr. Bobis. Doc. 62 at 49-50.

By correspondence dated January 8, 2020, counsel for West Harlem and Development wrote to plaintiff's counsel requesting authorizations, unrestricted in time, for Mount Sinai St. Luke's Hospital, Samuel Rosenberg, M.D., Fernando Bobis, M.D., Brian Fidall, M.D.,

Theradynamics Physical Rehabilitation, NYP Columbia Medical Center Vanderbilt Clinic, Medicaid, Medicare, health care insurance, and employment records from R&M Construction and the New York City School Construction Authority. Doc. 63.

In a case scheduling order filed January 16, 2020, this Court (Frank, J.) directed, inter alia, that within 30 days, plaintiff was to provide authorizations for the following: medical records; collateral source records; and, if plaintiff was claiming lost wages, W-2 forms or employment record authorizations for the year prior to, the year of, and the year after the date of the accident, as well as for the period during which plaintiff missed work. Doc. 35 at pars. 4(a-c).

On March 6, 2020, plaintiff moved (motion sequence 002) to amend the summons and complaint to add WHGA Garvey Housing Development Fund Company, Inc., the owner of the premises, as an additional defendant. Doc. 44. Defendant did not oppose the motion and, by stipulation filed July 16, 2020, the parties agreed to the amendment of the complaint, thereby resolving plaintiff's motion. Doc. 83.

On May 7, 2020, while plaintiff's motion was pending, West Harlem and Development cross-moved: a) pursuant to CPLR 3124 to compel plaintiff to respond to their combined demands dated September 19, 2019, including a demand for unrestricted authorizations for medical providers; b) pursuant to CPLR 3126 to dismiss the complaint due to plaintiff's willful failure to comply with the January 16, 2020 case scheduling order; and c) pursuant to CPLR 3126 to preclude plaintiff from testifying or offering any evidence regarding liability or damages at trial. Doc. 53.

In support of the cross motion, West Harlem and Development argue that they are entitled to unrestricted authorizations for the records of Mount Sinai St. Luke's Hospital, Samuel Rosenberg, M.D., Fernando Bobis, M.D., Brian Fidall, M.D., Theradynamics Physical Rehabilitation, NYP Columbia Medical Center Vanderbilt Clinic, Medicaid, Medicare, health care

insurance, and employment records from R&M Construction and the New York City School Construction Authority.

In opposition, plaintiff argues that she has already provided defense counsel with medical record authorizations. Doc. 71. She further asserts that the demand for employment record authorizations for two years prior to the accident is improper insofar as it exceeds the scope of the case scheduling order, which limited the period to one year prior to the accident. Doc. 71. Plaintiff also maintains that she is not required to exchange a collateral source authorization because she is a Medicare recipient (although she simultaneously represents that she is too young to be a Medicare recipient). Doc. 71 at 5-6.²

LEGAL CONCLUSIONS:

As noted previously, the parties stipulated to allow plaintiff to amend the complaint to add WHGA Garvey Housing Development Fund Company, Inc. as a defendant. Therefore, plaintiff's motion is granted on consent.

That branch of the cross motion seeking to strike the complaint pursuant to CPLR 3126 is denied, as there is no indication of willful or contumacious conduct on the part of plaintiff's counsel. *Michaluk v New York City Health & Hosps. Corp.*, 169 A.D.3d 496 (1st Dept 2019). A review of the exhibits annexed to the parties' motion papers reflects that plaintiff's counsel substantially complied with defendants' demands. However, in its discretion, this Court grants the cross motion to compel to the extent set forth below. *See* CPLR 3101(a); *O'Halloran v Metropolitan Transp. Auth.*, 169 A.D.3d 556, 556 (1st Dept 2019).

² The authorizations provided by plaintiff reflect that she was born in 1982. Doc. 59.

Initially, plaintiff is directed to serve West Harlem and Development with unrestricted authorizations for the records of Mount Sinai St. Luke's Hospital, Samuel Rosenberg, M.D., Fernando Bobis, M.D., Brian Fidall, M.D., Theradynamics Physical Rehabilitation, and NYP Columbia Medical Center Vanderbilt Clinic since she is claiming the exacerbation of a previously asymptomatic cervical spine condition. *See Rom v Eurostruct, Inc.*, 179 AD3d 418 (1st Dept 2020).³

Although said defendants demanded employment authorizations for two years prior to and two years subsequent to plaintiff's accident, this Court directs that employment record authorizations for R&M Construction and the New York City School Construction Authority be provided pursuant to the terms of the case scheduling order, i.e., for one year prior to the accident, the year of the accident, the year following the accident, and any other period during which plaintiff missed work as a result of the accident.

Additionally, in accordance with the terms of the case scheduling order, plaintiff is to provide West Harlem and Development with collateral source authorizations, including Medicare or Medicaid, if applicable.

All of the authorizations referenced above must be provided to defense counsel within 30 days after service of this order with notice of entry.

Therefore, in light of the foregoing, it is hereby:

³ Although the case scheduling order did not direct plaintiff to provide unrestricted authorizations, such were requested in the letter by defendants' counsel sent to plaintiff's attorney on January 8, 2020. Doc. 63.

ORDERED that the motion of the plaintiff to amend the summons and complaint to add WHGA Garvey Housing Development Fund Company, Inc. as a defendant, as per the proposed amended summons and complaint, is granted upon consent; and it is further

ORDERED that the action shall hereinafter bear the following caption:

Shareefa Alisahadeo v West Harlem Group Assistance, Inc., WHGA Development Associates, L.P., and WHGA Garvey Housing Development Fund Company, Inc.; and it is further


ORDERED that plaintiff shall serve a copy of this order, with notice of entry, on all parties, including the additional defendant, as well as on the County Clerk and the Clerk of the Trial Support Office, who are to mark the court's records to reflect the additional party, and it is further

ORDERED that the plaintiff shall serve a copy of the amended summons and complaint in the form annexed to the motion on all defendants within 20 days after service of this order with notice of entry on all parties; and it is further

ORDERED that the cross motion by defendants West Harlem Group Assistance, Inc., WHGA Development Associates, L.P. is granted to the extent of directing plaintiff to provide the authorizations specified above within 30 days after service of this order with notice of entry; and it is further

ORDERED that all parties shall appear for a status conference by telephone on November 10, 2020 at 3:30 p.m. (for which counsel must either initiate the call or provide a dial-in number and access code to the court); and it is further

ORDERED that this constitutes the decision and order of the court.

	 <small>20200717165944K5EFC01ED43ABB0EFC4F19BAE56A202D3C74BB</small>
<u>7/17/2020</u>	KATHRYN E. FREED, J.S.C.
DATE	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> DENIED <input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> SUBMIT ORDER <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN
