SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART __15____

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KAMEESHA MCCORD, et al. Index №. 27316/2016E

-against- **Hon. MARY ANN BRIGANTTI**

DNR ELECTRIC INCORPORATED, et al. Justice Supreme Court

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The following papers numbered 1 to _____4____ were read on this motion (Seq. No. ____7_____) for ____**SUMMARY JUDGMENT**_____ noticed on January 29, 2020.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).	1, 2
Answering Affidavit and Exhibits	No(s).	3, 4
Replying Affidavit and Exhibits	No(s).	5

Upon the foregoing papers, the defendants DNR Electric Incorporated and Ramesh Raghunandan (collectively, "Defendants") move for an order granting them leave to reargue their motion to compel co-plaintiff Kameesha McCord ("McCord") to provide discovery, pursuant to CPLR 2221 (d) and CPLR 3126, and upon reargument, granting their motion to compel McCord to provide discovery. Defendants also move for an order compelling McCord to provide further discovery, pursuant to CPLR 3124. McCord opposes only the branch of Defendants' motion to reargue.

I. Reargue

A motion for leave to reargue pursuant to CPLR 2221 (d) "is committed to the sound discretion of the court" (*Rostant v Swersky*, 79 A.D.3d 456 [1st Dept 2010], citing *William P. Pahl Equip. Corp. v Kassis*, 182 A.D.2d 22, 27 [1st Dept 1992], *lv dismissed in part, denied in part* 80 N.Y.2d 1005 [1992]). Such a motion "may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision'" (*William P.*, 182 A.D.2d at 27, citing *Schneider v Solowey*, 141 A.D.2d 813 [2d Dept 1988]). It is "not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments

different from those originally asserted" (*id.* [internal citations omitted]). In addition, CPLR 2221 expressly states that a motion for leave to reargue "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry" *id.* at § (d) (3). Motions seeking leave to reargue filed after the thirty-day period are untimely.

In this case, Defendants seek to reargue their own motion compelling Plaintiffs to provide discovery (seq. #005). This motion was decided pursuant to an Order of this Court dated June 4, 2019 (hereinafter "the Order"). Defendant served the Order with notice of its entry on July 2, 2019. Given, then, that the Order, was served with written notice of its entry on July 2, 2019, Defendants were to file the instant motion to reargue by August 1, 2019. The Court points out that Defendants were responsible for starting the thirty-day time period. Nevertheless, Defendants did not file the instant motion to reargue until January 29, 2020, or 211 days, after the Order was served with written notice of its entry on July 2, 2019. This is approximately seven times longer than CPLR 2221 allows for. Defendants never requested an extension of time to file the instant motion to reargue, nor did they provide the Court with any explanation for the delay in their moving papers to reargue, instead merely relying upon an irrelevant section of the CPLR in reply (Wenchell reply affirmation, ¶7, citing CPLR 2001). Thus, the Court exercises its discretion and declines to entertain Defendants' motion to reargue because Defendants failed to act diligently by not moving to reargue within the time period provided in CPLR 2221(d) (3) and never requested an extension of time to file the instant motion (*see Selletti v Liotti*, 45 A.D.3d 668, 669 [2d Dept 2007]).

Even if the Court were to consider the untimely motion, the Order disposed of any claim by McCord relating to her lumbar spine. Defendants do not claim that they require McCord's medical records for any purpose other than to determine the extent of McCord's allegedly prior lumbar spine injury (Wenchell affirmation, ¶23, 26, 28-29; Wenchell reply affirmation, ¶5). Thus, since McCord is no longer pursuing a lumbar spine injury claim against Defendants, Defendants do not require any discovery relating to McCord's lumbar spine (compare Brito v Gomez, 33 N.Y.3d 1126, 1127 [2019], citing CPLR 3101 [a]).

II. Compel

Defendants also seek authorization for the release of any and all medical records, reports, diagnostic testing, and films related to McCord's: (1) subsequent motor vehicle accident dated October 27, 2016; (2) McCord's Workers Compensation file; and (3) McCord's Social Security disability file. Defendants served McCord with a Notice for Discovery and Inspection ("NOI") on October 21, 2019. Following an Order of this Court dated November 26, 2019, requiring that McCord respond to Defendants NOI within thirty-days, McCord served a response on December 18, 2019, objecting to all demands contained in the NOI. Initially, the Court finds that McCord's Workers Compensation file and Social Security disability file do not need to be exchanged as part of discovery. McCord stated in her response to the NOI that she is "did not file a worker's compensation claim in connection with" the subject accident and that she "is not receiving social security disability benefits in connection to injuries suffered in this accident." The Court addresses McCord's subsequent accident in fuller detail below.

"It is well settled that, in determining the types of material discoverable by a party to an action, whether something is 'material and necessary' under CPLR 3101 (a) 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' (*Abdur-Rahman v Pollari*, 107 A.D.3d 452, 454 [1st Dept 2013], quoting *Allen v Crowell-Collier Publ. Co.*, 21 N.Y.2d 403, 406 [1968]). "[D]iscovery determinations are discretionary [and] must be evaluated on a case-by-case basis with due regard for the strong policy supporting open disclosure" *Andon v 302-304 Mott St. Assocs.*, 94 N.Y.2d 740, 747 [2000] [citation omitted]). Furthermore, "[d]iscovery determinations rest with the sound discretion of the motion court" (*Gumbs v Flushing Town Ctr. III, L.P.*, 114 A.D.3d 573, 574 [1st Dept 2014], citing *Andon*, 94 N.Y.2d at 745).

In this case, McCord brings a claim to recover for personal injuries allegedly suffered in a motor vehicle accident that took place on February 23, 2016 ("the subject accident"). Approximately eight months later on October 27, 2016, McCord was involved in a subsequent motor vehicle accident. In opposition to Defendants' motion to compel and reargue, McCord focused entirely on the issue of reargument. Thus, the only reason the Court can find for why McCord refused to comply with Defendants' request is within McCord's response to the NOI, which states that Defendants have "no factual predicate establish with respect to the relevancy of the evidence" and that "it has not been established that [McCord] subsequently injured the body parts that are at issue in the current litigation." However, the point of Defendants' request is to find out which body parts were injured in McCord's subsequent accident (*see Cynthia B. v New Rochelle Hospital Medical Center*, 60 N.Y.2d 452, 456-457 [1983] [citations omitted]; *Almonte v Mancuso*, 132 A.D.3d 529 [1st Dept 2015] citations omitted]; *compare Abrew v Triple C Props., LLC*, 178 A.D.3d 526, 527 [1st Dept 2019] [denying defendants' motion to compel discovery of plaintiff's general medical condition both before and after the accident because request too broad]). Therefore, the Court will tailor Defendants' NOI, and grant Defendants' motion to the extent that McCord is to provide Defendants with information regarding what body parts she injured in the subsequent accident (*see Lafata v Verizon Communications Inc.*, 180 A.D.3d 575 [1st Dept 2020] [denying defendants' motion to compel discovery of plaintiff's prior motor vehicle accident where demands not tailored appropriately]). Exchanging information regarding what injuries McCord suffered in the subsequent accident, if any, will determine what medical records, reports, diagnostic testing, and films from the subsequent accident are sufficiently related to instant personal injury action (*see Wilson v Simpson W. Realty, LLC*, 179 A.D.3d 417 [1st Dept 2020]).

III. Conclusion

Accordingly, it is hereby,

ORDERED, that Defendants' motion to reargue is denied, and it is further,

ORDERED, that Defendants' motion to compel is granted to the extent that McCord is to provide Defendants with information regarding what body parts she injured in her subsequent motor vehicle accident on October 21, 2016, within thirty (30) days after service of a copy of this Order with Notice of Entry.

This constitutes the Decision and Order of this Court.

Dated: 6/4/20 **Hon.** _____ **J.S.C.**

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY ☑ CASE STILL ACTIVE
2. MOTION IS.....	☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
	☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT