

Robles v 635 Owner LLC
2020 NY Slip Op 34272(U)
December 24, 2020
Supreme Court, New York County
Docket Number: 162049/2015
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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ANGEL ROBLES,

Index No. 162049/2015

Plaintiff

- against -

DECISION AND ORDER

635 OWNER LLC and W5 GROUP LLC,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Defendant W5 Group LLC, the general contractor on a construction project where plaintiff claims he was injured, moves to vacate the note of issue plaintiff filed February 20, 2020, 22 N.Y.C.R.R. § 202.21(e), and compel him to produce outstanding disclosure, C.P.L.R. § 3124, or alternatively to preclude plaintiff from offering evidence of damages at trial. C.P.L.R. § 3126(2). For the reasons explained below, the court grants W5 Group LLC's motion in part.

II. W5 GROUP'S MOTION

W5 Group demands that plaintiff produce medical records pertaining to his attempted suicide in 2005 and the non-privileged portion of an attorney's file and the police report

pertaining to that incident, as requested in a notice of discovery and inspection dated August 30, 2019. W5 Group also demands authorizations for plaintiff's Facebook account and the name of plaintiff's attorney in his divorce action, as requested in a notice of discovery and inspection dated September 5, 2019. W5 Group maintains that the disclosure is necessary to defend against the damages that plaintiff claims, including the psychological impact of his injuries and his alleged inability to work. In opposition, plaintiff maintains that he provided authorizations for the medical records, denies any attorney's involvement with the 2005 suicide attempt, and objects to information regarding the divorce action as irrelevant.

The police report pertaining to plaintiff's 2005 suicide attempt and plaintiff's Facebook account may yield evidence material and necessary to W5 Group's defense to his claimed damages. C.P.L.R. § 3101(a); Brito v. Gomez, 33 N.Y.3d 1126, 1127 (2019); Forman v. Henkin, 30 N.Y.3d 656, 661, 666 (2018). Similarly, plaintiff's divorce attorney may possess relevant information related to the testimony of Socorro Chavez Dominguez, plaintiff's former wife, that plaintiff has suffered longstanding mental impairments and threatened to kill himself. In reply, however, W5 Group does not challenge the claim that plaintiff

provided authorizations for medical records related to his suicide attempt.

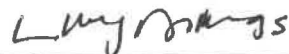
The court may order disclosure after the note of issue and without vacating it as long as no party is prejudiced. Vazquez v. 3M Co., 177 A.D.3d 428, 429 (1st Dep't 2019); Hickey v. City of New York, 159 A.D.3d 511, 511 (1st Dep't 2018). See Valencia v. City of New York, 188 A.D.3d 549, 549 (1st Dep't 2020). W5 Group identifies no prejudice if the action remains on the trial calendar, nor does the court discern prejudice to any party. W5 Group demonstrated its need for the additional disclosure delineated above, however, and did not unduly delay in seeking the disclosure. Valencia v. City of New York, 188 A.D.3d at 549; Hickey v. City of New York, 159 A.D.3d at 511.

III. CONCLUSION

Consequently, the court grants W5 Group's motion to the extent of compelling disclosure as follows. C.P.L.R. § 3124. Within 20 days after service of this order with notice of entry, plaintiff shall provide to defendant W5 Group the police report pertaining to plaintiff's suicide attempt in 2005, authorization to obtain records and photographs from plaintiff's Facebook account, and the identity of plaintiff's attorney in his divorce action. The court otherwise denies W5 Group's motion, including

its request for records from plaintiff's treating physician raised for the first time in reply. Newell v. City of New York, 180 A.D.3d 425, 426 (1st Dep't 2020); Gumbs v. Flushing Town Ctr. III, L.P., 114 A.D.3d 573, 574 (1st Dep't 2014).

DATED: December 24, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C