

Perelman v Henchecliff
2020 NY Slip Op 34324(U)
December 23, 2020
Supreme Court, New York County
Docket Number: 805303/2015
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY

PART

IAS MOTION 56EFM

Justice

-----X

JANE TERKER PERELMAN,

Plaintiff,

- v -

CLAIRE HENCHECLIFF, M.D., and NEW YORK-PRESBYTERIAN
HOSPITAL/WEILL CORNELL MEDICAL CENTER,

Defendants.

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The following e-filed documents, listed by NYSCEF document number 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, and 114 (Motion 002)

were read on this motion to/for

COMPEL DISCOVERY/X-MOTION FOR
PROTECTIVE ORDER

In this action to recover damages for medical malpractice, the defendants move pursuant to CPLR 3124 to compel the plaintiff to submit to a further deposition and provide documents responsive to a January 21, 2020 status conference order. The plaintiff cross-moves pursuant to CPLR 3103 for a protective order preventing the defendants from conducting a further deposition. The motion is granted to the extent that the plaintiff shall produce the relevant business tax records for JTP Associates, Ltd., and Beauty Innovation Group, LLC, and thereafter appear for an additional limited deposition in accordance herewith, the motion is otherwise denied, and the cross motion is denied.

The defendants have conducted extensive discovery in this action, including two depositions of the plaintiff. In a status conference order dated January 21, 2020 (Shulman, J.), the court directed the plaintiff to produce copies of her 2018 personal income tax returns, the 2010-2015 business income tax returns for her business JTP Associates, Ltd., and the 2017-2018 business income tax returns for her business Beauty Innovation Group, LLC. The order

further permitted the defendants to move for permission to compel a further deposition within 30 days of their receipt of the 2018 returns. On March 16, 2020, the defendants made the instant motion, seeking to compel the plaintiff to submit to “a further deposition . . . due to the need for additional questioning based on subsequently obtained tax and disability records, and compelling plaintiff to provide 2018 personal and business Tax Returns per the January 21, 2020 Order.” On March 14, 2020, however, the plaintiff had already produced her 2018 personal income tax returns. In the transmittal letter, the plaintiff’s counsel explained that

“As we previously advised, we were unable to obtain JTP Associates’ Tax Returns from 2005-2010 either directly or indirectly from the IRS or Mrs. Perelman. As you are aware, during the years 2005-2010 Mrs. Perelman was working for Cosmedicine/Klinger Advanced Aesthetics and Harry and David, which she testified was her only source of income during that period of time. We have previously provided you with W-2s and tax records for those years on February 4, 2016. (See Perelman EBT at pp. 189-192, 212-217).”

The letter did not reference the demands for copies of the 2017-2018 business tax records of Beauty Innovation Group, LLC. The plaintiff thereafter moved for a protective order preventing the defendants from conducting a third deposition, this time in connection with the plaintiff’s tax returns and earned income.

CPLR 3101(a) provides that “there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” This language is “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” (*Osowski v AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406-407 [1968]). The principle of full disclosure does not, however, give a party the right to uncontrolled and unfettered disclosure. Matters relating to disclosure lie within the broad discretion of the trial court which is in the best position to determine what is material and necessary (see *Buxbaum v Castro*, 82 AD3d 925 [2d Dept 2011]).

The defendants established that the plaintiff remains obligated to provide the documentation described in the January 21, 2020 status conference order (see CPLR 3124).

Nonetheless, as explained on the IRS's web site, as of July 1, 2019, the IRS eliminated the third-party mailing option from Form 4506 (Request for Copy of Tax Return), Form 4506-T, (Request for Transcript of Tax Return), and Form 4506-EZ (Short Form Request for Individual Tax Return Transcript). Both the IRS and the Treasury Inspector General for Tax Administration determined that the mail option presented a risk to sensitive taxpayer information. Hence, as of that date, upon a request by a taxpayer, tax returns and transcripts will be mailed only to the taxpayer's address of record. IRS Form 13873-R now includes a check-off box that informs a third-party addressee that it will not process any request to send it returns and transcripts, and cannot provide the reasons for its determination not to process the request (see *generally* 26 CFR 601.702[d][1], 26 CFR 301.9000-1-301.9000-6). The plaintiff's requests for those tax records, however, were clearly rejected because the request asked that they be sent to a third-party addressee.

The disclosure of the plaintiff's personal and business tax records is clearly relevant to her claims of lost wages, revenue, and income. The plaintiff failed to present any valid reason why she should not be required to comply with the status conference order and provide the requested disclosure. Hence, that branch of the defendants' motion seeking to compel that disclosure is granted (see *Willam J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 131 AD3d 960, 963-964 [2d Dept 2015]; *Rocco v Family Foot Ctr.*, 94 AD3d 1077, 1080 [2d Dept 2012]) to the extent that, on or before January 29, 2021, the plaintiff personally shall submit Forms 4506 and 4506-T to the IRS to obtain the 2010-2015 business income tax returns for JTP Associates, Ltd., and the 2017-2018 business tax returns for Beauty Innovation Group, LLC, to be sent directly to the taxpayers' address; upon receipt, she shall present them to her attorney, who shall forthwith provide them to the defendants' attorney.

While the court may issue a protective order to prevent an additional deposition of a party where the demand for such a deposition is made solely to harass the party or delay resolution of the underlying dispute (see *Scalone v Phelps Memorial Hosp. Center*, 184 AD2d

65 [2d Dept 1992]), that situation is not presented here. Rather, where, as here, the defendants have not been able fully to question the plaintiff in connection with her claims for lost wages, revenue, and income, a further deposition limited to questions relevant to her personal and business tax records is warranted (see generally *Bolos v Staten Island Hosp.*, 217 AD2d 643, 644 [2d Dept 1995]; *Keane v Ranbar Packing, Inc.*, 121 AD2d 601 [2d Dept 1986]; *Caceres v 1000 Dean, LLC*, 2019 NY Slip Op 33001[U] [Sup Ct, Kings County, Oct. 3, 2019]).

Accordingly, it is

ORDERED that the defendants' motion is granted to the extent that

(a) on or before January 29, 2021, the plaintiff personally shall submit Forms 4506 and 4506-T to the IRS to obtain the 2010-2015 business income tax returns and transcripts for JTP Associates, Ltd., and the 2017-2018 business tax returns and transcripts for Beauty Innovation Group, LLC, to be sent directly to the taxpayers' address; upon receipt, she shall present them to her attorney, who shall forthwith provide them to the defendants' attorney, and

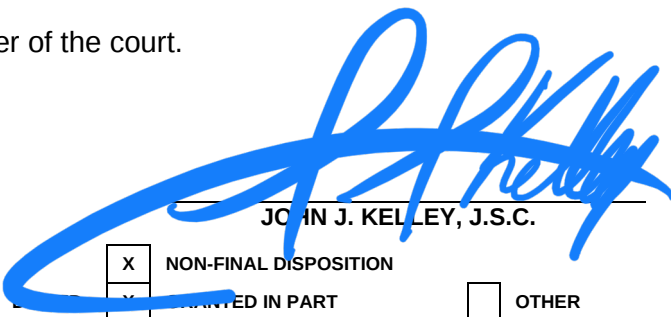
(b) the plaintiff shall submit to a deposition, which shall be conducted remotely, on or before March 31, 2021, limited to issues of loss of income, revenue, and wages raised by the subject tax returns and transcripts,

and the motion is otherwise denied; and it is further,

ORDERED that the plaintiff's cross motion for a protective order is denied; and it is further,

ORDERED that the plaintiff's deadline for the filing of the Note of Issue and Certificate of Readiness is extended to June 30, 2021.

This constitutes the Decision and Order of the court.

<u>12/23/2020</u>			
DATE		JOHN J. KELLEY, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE