

Lugo v Rogers

2020 NY Slip Op 35765(U)

September 17, 2020

Supreme Court, Bronx County

Docket Number: Index No. 25679/2019E

Judge: Ben R. Barbato

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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RAMON A. LUGO,

Index No 25679/2019E

Plaintiff,

-against-

Hon. **BEN R. BARBATO**

KEAGAN T. ROGERS, RONBAR LABORATORIES,
INC., JOSE MARTINEZ-PORTUOND and FANCY
FOOD LOGISTICS LLC,

Justice Supreme Court

Defendants.

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The following papers in the NYSCEF system numbered 44-55, & 99-110 ___ were read on this motion (Seq. No. 3) for **MOTION TO COMPEL** noticed on **July 7, 2020** and submitted on **July 21, 2020**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 44-55 & 99-110
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s)

Defendants Keagan T. Rogers and Ronbar Laboratories Inc. (collectively referred to as "Ronbar") move for an Order (1) Pursuant to CPLR § 3126 dismissing Plaintiff's complaint for failure to provide discovery pursuant to a Court Order; or (2) precluding Plaintiff from testifying at trial as to liability and damages pursuant to CPLR § 3126; or (3) pursuant to CPLR §3124 compelling the Plaintiff to furnish discovery responses pursuant to a Court Order.

Plaintiff commenced this action on May 14, 2019 to recover damages for personal injuries sustained in a motor vehicle accident that occurred on March 18, 2019.

Upon Ronbar's Notice of Motion and the Affirmation in Support and the Exhibits submitted in support thereof; the Affirmation in Opposition of Plaintiff and the Exhibits submitted therewith; Ronbar's Affirmation in Reply; and due deliberation; Ronbar's motion is granted in part.

Ronbar moves to compel discovery on the grounds that Plaintiff failed to timely furnish certain discovery requested by discovery demands. Ronbar states that on September 16, 2019, its Verified Answer to the Complaint was served along with various Demands for Discovery. On December 3, 2019, after claiming not to have received any responses to the discovery demands, Ronbar sent Plaintiff a 15-Day Letter, requesting that the outstanding discovery be provided.

On February 14, 2020, after receiving no response to any of its various demands, Ronbar moved this Court for an Order dismissing Plaintiff's complaint for failure to provide discovery or, in the alternative, to compel said discovery. On March 2, 2020, Plaintiff provided a Verified Bill of Particulars, claiming it to be responsive to Ronbar's demands. In response to Plaintiff's provision of the then outstanding discovery, Ronbar agreed to withdraw its Motion to Dismiss.

On March 19, 2020, after reviewing Plaintiff's Bill of Particulars, counsel for Ronbar followed up with Plaintiff, advising that the Bill of Particulars was deficient and requested a Supplemental Bill of Particulars. Ronbar claims that, to date, despite the March 19, 2020 letter and several phone calls to Plaintiff's counsel, Ronbar's demand for a Supplemental Bill of Particulars has not been responded to.

Ronbar stated in its March 19, 2020 letter to Plaintiff that in paragraph 6(b&c) of the Bill of Particulars, they merely state that their client was confined to bed rest and home "intermittently" without giving any idea as to the exact amount of time that he remained in bed and/or at home. Ronbar further stated in the letter that in paragraph 7(a-d) of the Bill of Particulars, Plaintiff objects to the demand, alleging that it is improper to ask for the identities of the medical providers who client treated Plaintiff. Ronbar contends that the names and identities of these medical providers is clearly within the scope of CPLR § 3043, and requests in the letter that, as soon as practicable, Plaintiff provide a Supplemental Bill of Particulars that states, with specificity:

"1. How long Mr. Lugo was confined to his bed and/or home following the alleged incident. 2. An enumerated list of the medical providers and/or facilities at which Mr. Lugo sought treatment following the alleged incident".

Ronbar claims that despite the March 19, 2020 letter and several phone calls to Plaintiff's counsel, its demand for a Supplemental Bill of Particulars has not been responded to.

Ronbar now moves to compel discovery on the grounds that Plaintiff failed to timely furnish its demand for a Supplemental Bill of Particulars. Ronbar argues that severe prejudice will result if it is not furnished with responses to discovery or provided the opportunity to depose the adverse parties.

Plaintiff claims in his Affirmation in Opposition that on February 25th, 2020, Plaintiff's counsel served Ronbar's counsel with his Response to Combined Demands and on March 2nd, 2020, upon reviewing Plaintiff's discovery responses and Bill of Particulars, Ronbar withdrew its first motion seeking discovery. Plaintiff argues that if Ronbar was not satisfied with Plaintiff's discovery responses when the initial motion was made, then that motion should never have been withdrawn. Plaintiff claims that on March 16, 2020, this Court issued a Case Scheduling Order which ordered all parties to disclose discovery by April 24, 2020. Plaintiff claims to have fully complied with the Case Scheduling Order, as well as Ronbar's discovery demands.

Plaintiff argues that CPLR 3043 does not compel Plaintiff to enumerate in his Bill of Particulars the names and addresses of the medical providers. Plaintiff claims that all of Plaintiff's medical providers and HIPAA authorizations for same were provided in the Response to Combined Demands on February 25, 2020. Plaintiff further claims that dismissal and or preclusion is not warranted as Plaintiff has fully complied with the order of this Court and Ronbar's discovery demands, as required by CPLR 3043.

Ronbar replied to Plaintiff's Affirmation in Opposition, arguing that Plaintiff fails to acknowledge that the prior motion was withdrawn in good faith due to Ronbar's belief that Plaintiff had made a good faith effort to fully comply with Ronbar's demands. Ronbar argues that although it has now been over nine (9) months since the initial discovery demand was served on Plaintiff, over six (6) months since Ronbar's initial Demand Letter for a Supplemental Bill of Particulars was sent, over four (4) months since Ronbar's first Motion to Strike was served, three (3) months since Ronbar's second Demand Letter for a Supplemental Bill of Particulars was sent, and twenty (20) days since Ronbar's second Motion to Strike was served, Plaintiff

has, nevertheless, failed to provide any of the documentation demanded or moved forward with depositions.

After reviewing all papers and exhibits submitted by the parties, the court directs that Plaintiffs provide Ronbar with the Supplemental Bill of Particulars as demanded in Ronbar's March 19, 2020 second demand letter.

Accordingly, it is

ORDERED that, within 30 days after service of a copy of this order with written notice of its entry, Plaintiff shall serve the Supplemental Bill of Particulars as demanded in Ronbar's March 19, 2020 second demand letter; and it further

ORDERED, that Ronbar's motion is otherwise denied.

This constitutes the Decision and Order of this Court.

Dated: September 17, 2020

Hon.



BEN R. BARBATO, J.S.C.