

Murray v Four Seasons Hotels Ltd.
2021 NY Slip Op 30360(U)
February 4, 2021
Supreme Court, New York County
Docket Number: 159050/2019
Judge: Verna Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 36

Justice

JACK MURRAY, Plaintiff, INDEX NO. 159050/2019 MOTION SEQ. NO. 001

- v -

FOUR SEASONS HOTELS LIMITED and 30 PARK PLACE HOTEL LLC d/b/a FOUR SEASONS HOTEL NEW YORK DOWNTOWN, Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 38, 39

were read on this motion to/for

DISMISS

Plaintiff commenced this action seeking to recover damages for personal injuries allegedly sustained on August 23, 2019 while at the Four Seasons Hotel New York Downtown, located at 27 Barclay Street in Manhattan (hereinafter "the premises"). (NYSCEF Doc. Nos. 47-48, amended summons and complaint). Movants Four Seasons Hotel Limited and 30 Park Place Hotel LLC d/b/a Four Seasons Hotel New York Downtown¹, the alleged owners of the premises, seek an Order pursuant to CPLR 3126, to dismiss the pleadings, with prejudice based on plaintiff's failure to provide outstanding discovery or, alternatively, pursuant to CPLR 3124, for an order compelling said discovery. (NYSCEF Doc. Nos. 14-31, 38-39).

After joinder of issue, plaintiff provided defendants with authorizations for Bellevue Hospital, Synergy Spine Care & Rehabilitation Medicine, and The New York State Workers' Compensation

¹ Four Seasons Hotel Limited and 30 Park Place Hotel LLC d/b/a Four Seasons Hotel New York Downtown move the court as defendants/third-party plaintiffs. The court notes that while a third-party complaint was filed (NYSCEF Doc. No. 11), the status of the third party action is unclear as NYSCEF does not reflect an Index No. assigned to same nor filing of an answer or proof of service of the third-party complaint.

Board, limited from the date of the accident until the present. (NYSCEF Doc. No. 20, *authorizations dated October 14, 2019*). On December 4, 2019, plaintiff served a demand for further authorizations for the following providers: (1) Gotham City Orthopedics, LLC; (2) Jamaica Hospital Medical Center; (3) the ambulance provider that transported plaintiff to the hospital following the incident; and (4) the Workers' Compensation Board. (NYSCEF Doc. No. 21). In February 2020, defendants also requested plaintiff's health insurance carriers from 2007 to the present. (NYSCEF Doc. No. 24). In March 2020, plaintiff served an authorization for the Jersey Advanced MRI & Diagnostic Center, limited to records since the date of the accident. (NYSCEF Doc. No. 25). On March 13, 2020, defendants served a demand seeking an authorization for Hudson River Radiology Center; however, plaintiff again provided only a dated restricted authorization for this provider, which defendants rejected. (NYSCEF Doc. Nos. 27, 33). In April 2020, plaintiff provided defendant with a date-restricted authorization for The Back Institute, which defendants likewise rejected. (NYSCEF Doc. No. 28).

In follow-up letters seeking response to said demands, defendants asserted that they were entitled to authorizations unrestricted by date because, pursuant to the Bill of Particulars and Supplemental Bill of Particulars, plaintiff had placed his entire medical condition at issue through broad allegations of physical injury and mental anguish, including claims of loss of enjoyment of life, and through allegations that defendants had exacerbated pre-existing injuries. (NYSCEF Doc. Nos. 22-23, 26).

In the instant motion, defendants contend that they are entitled to new authorizations, unrestricted by date, for the release of medical records preceding the subject incident, in addition to plaintiff's health insurance/collateral source/primary care records to determine which medical providers treated plaintiff. (NYSCEF Doc. No. 16 ¶ 17, *Shelley Aff.*). Defendants maintain that the

broad allegations outlined in the Bill of Particulars, including claims of loss of enjoyment of life, as well as proof that plaintiff suffered from pre-existing conditions prior to the subject accident, support their entitlement to the same. (NYSCEF Doc. No. 16 ¶ 18).

Plaintiff opposes the motion, arguing, *inter alia*, that defendants are not entitled to unrestricted authorizations for the release of medical records predating the subject accident inasmuch as they have failed to establish a need for said documents by attaching to their motion papers an affidavit from a medical professional. (NYSCEF Doc. No. 32 ¶ 7, *Damashek's Aff.*). Moreover, plaintiff maintains that the demands are overboard and that, to the extent defendants are entitled to restricted authorizations, they have already been provided. (NYSCEF Doc. No. 32 ¶ 10).

As a general principle, there shall be “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” (CPLR 3101[a]). “The words, ‘material and necessary’, are . . . 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.” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]).

It is well-settled that a plaintiff waives physician-patient privilege with respect to “those conditions affirmatively placed in controversy.” (*Gumbs v Flushing Town Ctr. III, L.P.*, 114 AD3d 573, 574 [1st Dept 2014] [internal quotation marks and citation omitted]; see *Brito v Gomez*, 168 AD3d 1, 7 [1st Dept 2018]; *Diako v Yunga*, 148 AD3d 438, 438 [1st Dept 2017]). Moreover, “[p]reexisting unrelated conditions . . . become material and necessary, and, thus, discoverable when it is claimed that an accident upon which a lawsuit is premised exacerbated or aggravated an underlying condition.” (*Moore v Metropolitan Transp. Auth.*, 2016 NY Slip Op 51891[U], *3 [Sup Ct, Bronx County 2016], citing *McGlone v Port Auth. of NY & New Jersey*, 90 AD3d 479, 480 [1st

Dept 2011]; *see Rom v Eurostruct, Inc.*, 179 AD3d 418, 418 [1st Dept 2020]; *Rega v Avon Prods., Inc.*, 49 AD3d 329, 330 [1st Dept 2008]).

As an initial matter, that branch of the motion seeking to strike the amended summons and complaint is denied because plaintiff has substantially complied with his disclosure obligation (NYSCEF Doc. No. 33) and defendants have thus failed to conclusively establish that plaintiff's failure to comply with the outstanding demands were "willful, contumacious or due to bad faith" so as to warrant such a drastic remedy. (*Nugent v City of NY*, 2020 NY Slip Op 07715, *1 [1st Dept 2020]; *see McGlone v Port Auth. of NY & New Jersey*, 90 AD3d at 480).

Notwithstanding the foregoing, the remaining branch of the motion is granted. It is undisputed that a CT scan and Bellevue Hospital's medical records from the date of the accident reveal that plaintiff had preexisting back conditions and/or injuries. (NYSCEF Doc. No. 29-30). More importantly, in the Bill of Particulars and Supplemental Bill of Particulars, not only does plaintiff allege that defendants "caused, sustained, exacerbated, aggravated, [or] activated" the injuries to his back, right ankle and right knee, as well as "the skin, bones, muscles, tissues, cartilage, ligaments, blood vessels, nerve systems, and nerve centers of the affected areas of the body," but he further claims that defendants "may have aggravated, precipitated and or activated a pre-existing and/or latent asymptomatic condition or disease." (NYSCEF Doc. Nos. 19 ¶ 9-10, *Bill of Particulars*; 25 ¶ 1, *Supp. Bill of Particulars*). Since plaintiff has placed his entire medical condition at issue, "defendants are entitled to discovery to determine the extent, if any, that plaintiff's claimed injuries 'are attributable to accidents other than the one at issue here.'" (*McGlone v Port Auth. of NY & New Jersey*, 90 AD3d at 480, quoting *Rega v Avon Prods., Inc.*, 49 AD3d at 330; *see Rom v Eurostruct, Inc.*, 179 AD3d at 418; compare *O'Brien v Port Auth. of NY & New Jersey*, 100 AD3d 546, 546 [1st Dept 2012]; *Meighn v Suggs*, 2019 NY Slip Op 32986[U], *19 [Sup Ct, NY County 2019]).

Therefore, inasmuch as plaintiff's opposition to the demands are premised solely on the date restriction of the discovery sought, this Court finds that defendants are entitled to new unrestricted authorizations, as well as, authorizations for plaintiff's health insurance/collateral source/primary care records to ascertain which medical providers treated plaintiff.² The remaining arguments are either without merit or need not be addressed given the foregoing. Accordingly, it is hereby


ORDERED that defendants' motion is granted to the extent that plaintiff is directed to provide the outstanding discovery within forty-five (45) days, and it is otherwise denied; it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this order, with notice on entry, on plaintiff; and it is further

ORDERED that parties are directed to appear for the previously scheduled remote conference on March 10, 2021; and it is further

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

February 4, 2021



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

² The cases cited by plaintiff in support of the argument that an affidavit from a medical professional is required is unavailing. (see *Budano v Gurdon*, 97 AD3d 497 499 [1st Dept 2012]; *Manley v NY City Hous. Auth.*, 190 AD2d 600, 600 [1st Dept 1993]).