

Eason v Vega

2021 NY Slip Op 33837(U)

February 15, 2021

Supreme Court, Nassau County

Docket Number: Index No. 604871/2015

Judge: Sharon M.J. Gianelli

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 17
Present: Hon. Sharon M.J. Gianelli

QUASIN T. EASON, X

Plaintiff,

-against -

FARRAD R. VEGA, KERIMA VEGA, LINDA M.
ARTUSA and ASUTRA CORP.,

Defendants.

Papers submitted on this motion: X

Motion Seq.007-

Defendant Artusa and Asutra Corp's Notice of Motion and Affirmation in Support X

Plaintiff's Affirmation in Opposition X

Defendants' Reply X

Motion Seq.008-

Defendant Vega's Notice of Cross-Motion and Affirmation in Support X

Plaintiff's Affirmation in Opposition X

Defendant's Reply X

This action was commenced by the filing of a Summons and Complaint on July 29, 2015.

An Answer was filed by Defendants Farrad R. Vega, Kerima Vega (hereinafter the Vega Defendants) on October 27, 2015. An Answer was filed by Defendants Linda M. Artusa and Asutra Corp., (hereinafter the Artusa Defendants) on November 10, 2015.

Factual History

This matter concerns claims for personal injuries alleged to have been sustained by the Plaintiff following a motor vehicle accident that occurred on October 2, 2014.

A Note of Issue was filed with respect to this matter on May 23, 2019. On or about May 11, 2020, Plaintiff served a Supplemental Bill of Particulars with respect to future treatment.

Both the Artusa Defendants (Motion Seq. 007) and the Vega Defendants (Motion Seq. 008) are now moving to strike Plaintiff's Note of Issue, to compel Plaintiff to submit to a further deposition on the subject of future damages, and to compel Plaintiff to provide additional HIPPA authorizations.

The Artusa Defendants argue that the relief requested is reasonable based upon this new Bill of Particulars, which alleges the need for future surgery, future injections, and future extensive medical care and treatment.

The Vega Defendants argue that the relief requested is appropriate based on the fact that Plaintiff has served a Supplemental Bill of Particulars containing new allegations.

Plaintiff submits opposition arguing that no new injuries or allegations are contained in the Supplemental Bill of Particulars. In fact, the Plaintiff argues that the Plaintiff has been undergoing the same exact treatment for five (5) years.

Plaintiff further argues that Defendants' expert has already commented on the issue of future treatment.

Finally, Plaintiff argues that the requested HIPPA authorization was provided on July 13, 2020, rendering that issue moot.

In Reply, the Artusa Defendants argue that this is the first time the claims for future treatment have been alleged with this specificity. Further, that the Supplemental Bill of Particulars creates “unusual and unanticipated circumstances.”

Analysis

22 NYCRR § 202.21 (e) provides as follows:

(e) Vacating note of issue. Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. However, the 20-day time limitation to make such motion shall not apply to tax assessment review proceedings. After such period, except in a tax assessment review proceeding, no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. If the motion to vacate a note of issue is granted, a copy of the order vacating the note of issue shall be served upon the clerk of the trial court.

Pursuant to CPLR § 3043(b) a party may file a Supplemental Bill of Particulars with respect to claims of “continuing special injury or damages and disabilities without leave of the Court” provided there is no new cause of action, injury or condition unrelated to the original injuries alleged.

The most recent Bill of Particulars is a supplemental, rather than an amended Bill of Particulars asserting enumerations of continuing injuries set forth generally in the prior Bills of Particulars.

The Supplemental Bill of Particulars permits Plaintiff to elaborate on the extent of the injuries and damages accrued. Here, there has been no change or amendment of alleged injuries, and by statute and case law Plaintiffs are entitled to continue to advise opposing counsel of the sequella of injuries or damages arising from the original accident.

Accordingly,

It is

ORDERED, that Defendants Linda M. Artusa and Asutra Corp.'s motion to strike Plaintiff's Note of Issue, is Denied; and

It is

Ordered that Defendants Linda M. Artusa and Asutra Corp.'s motion to compel Plaintiff to submit to a further deposition on the subject of future damages, is Denied; and

It is

Ordered that Defendants Linda M. Artusa and Asutra Corp.'s motion to compel Plaintiff to provide additional HIPPA authorizations, is Denied as moot; and

It is

Ordered that Defendants Farrad R. Vega, Kerima Vega’s motion to strike Plaintiff’s Note of Issue, is Denied; and

It is

Ordered that Defendants Farrad R. Vega, Kerima Vega’s motion to compel Plaintiff to submit to a further deposition on the subject of future damages, is Denied; and

It is

Ordered that Defendants Farrad R. Vega, Kerima Vega’s motion to compel Plaintiff to provide additional HIPPA authorizations, is Denied as moot.

All applications not specifically addressed herein are denied.

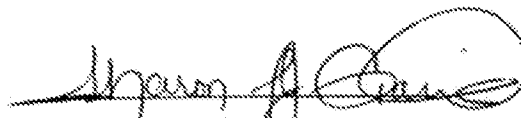
This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
February 15, 2021

ENTERED

Feb 17 2021

NASSAU COUNTY
COUNTY CLERK’S OFFICE


HON. SHARON M. GIANELLI,
Justice of the Supreme Court

The conformed signature on this Order and copies thereof shall be deemed original.