

Pacelli v Peter L. Cedeno & Assoc., P.C.

2022 NY Slip Op 30096(U)

January 10, 2022

Supreme Court, New York County

Docket Number: Index No. 158224/2016

Judge: Frank P. Nervo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04
Justice

-----X INDEX NO. 158224/2016

ATESA PACELLI, ANTHONY PACELLI,
Plaintiff, MOTION DATE 10/01/2021,
11/09/2021

- v -

PETER L. CEDENO & ASSOCIATES, P.C., PETER
CEDENO, DEFISION + ORDER ON
MOTION
Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 012) 293, 294, 295, 296,
297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 319, 320, 321, 322

were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 013) 308, 309, 310, 311,
312, 313, 314, 316, 318, 323

were read on this motion to/for EXTEND - TIME

Defendants Peter L. Cedeno & Associates, P.C. and Peter Cedeno
(hereinafter "Cedeno") seek an order granting a subpoena directing the
deposition of plaintiffs' counselor (mot. seq. 012) as well as an order extending
the note of issue deadline to complete same (mot. seq. 013). Plaintiffs oppose,
contending that the counselor was identified as a potential witness four years
ago, and that the Cedeno defendants have engaged in various delay tactics to
hamper resolution of this, and a related, matter (related matter index number
452016/2018). Notably, plaintiffs do not oppose "the concept of defendants
taking a deposition of [the counselor]" (NYSCEF Doc. No. 320 at ¶ 3).

CPLR § 2004 provides the Court with authority to extend the note of issue deadline upon just terms and upon good cause. “It is within the discretion of the Supreme Court whether to grant such an extension of time” (*Oliver v. Town of Hempstead*, 68 AD3d 1079, 1080 [2d Dept 2009]).

As previously noted by this Court, discovery has progressed sluggishly in this matter, filed in 2016, and in which, as evinced by the instant motions, depositions remain outstanding more than five years later. Notwithstanding, the accuracy of the counselor’s records has been disputed by the plaintiffs (see Deposition of Anthony Pacelli, NYSCEF Doc. No. 298). The Court is constrained to note that movants have not provided a full copy of Anthony Pacelli’s deposition transcript, providing only pages 136-175 on this motion. Notwithstanding, the Court finds that the deposition of the plaintiffs’ counselor is warranted given the aforementioned disputes. No other outstanding discovery is identified by the parties.

To the extent that the counselor relies on MHL § 33.13 for the proposition that disclosure of clinical records or information is prohibited, absent a judicial determination that the interest of justice of such disclosure outweighs a patient’s right to confidentially, such reliance is misplaced where, as here, the

patient has consented to the release of such material (see November 26, 2018 authorizations, NYSCEF Doc. No. 297).

Accordingly, it is

ORDERED that motion sequence 012 is granted to the extent of issuing a subpoena for the deposition of the plaintiffs' counselor, Karen Rosen, by defendants Peter L. Cedeno & Associates, P.C. and Peter Cedeno on February 17, 2022 beginning at 10:00am and continuing, until completion and without adjournment. Such deposition may occur either in-person or via electronic means and may not be adjourned absent Court permission; and it is further

ORDERED that should defendants fail to conduct the deposition of Karen Rosen, as above, such deposition is deemed waived; and it is further

ORDERED that any post-deposition demands or demands related to the deposition of Karen Rosen shall be served within 10 days of completion of deposition, and responses thereto shall be served within 20 days of receipt of demand; and it is further

[continued on following page]

ORDERED the deadline to file the note of issue is extended to April 1, 2022, and this extension is final absent extraordinary circumstances as found by the Court, in its discretion.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/10/2022

DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: