

Medici v Vanguard Const. & Dev. Co., Inc.
2022 NY Slip Op 30198(U)
January 24, 2022
Supreme Court, New York County
Docket Number: Index No. 150472/2020
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART 12

Justice

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INDEX NO. 150472/2020

CESARE MEDICI,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

VANGUARD CONSTRUCTION AND
DEVELOPMENT COMPANY, INC., 101
DELANCEY REALTY LLC, HSBC BANK USA,
N.A.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 53-65, 67, 68, 70-74 were read on this motion for _____ discovery.

By notice of motion, third-party defendant Clay Drywall Inc. moves for an order compelling plaintiff to provide discovery responses. Plaintiff opposes.

Plaintiff alleges that he was injured on December 17, 2019, when the ladder on which he was standing broke, causing him to fall. He alleges that as a result of his accident, he suffers from pain to his neck and middle and lower back, and that it was recommended that he undergo certain medical procedures on his ankle, lower back, spine, and shoulders. Plaintiff was also diagnosed with a post-accident heart condition, and he claims to be totally and permanently disabled. (NYSCEF 55).

At issue on this motion is Clay’s request for records related to plaintiff’s prior medical treatment. According to Clay, plaintiff’s deposition testimony and medical records produced to date establish that records related to his prior injuries are relevant to his current injuries and treatment. Specifically, plaintiff testified that approximately 10 years earlier, he fell from a

building and sustained injuries to his back and tailbone, for which he received medical treatment, rehabilitation, and disability insurance payments for three years during which his work was limited. He had also been hospitalized and treated for injuries to his back and neck as a result of a motor vehicle accident, and which was the subject of a lawsuit he brought. Approximately six years before the accident at issue, he was diagnosed with the same heart condition which allegedly abated until after the accident here. (*Id.*).

Clay thus seeks unrestricted authorizations for the following:

- (1) Dr. Warren Geisler's medical records, as Geisler treated plaintiff for his prior back injuries sustained as a result of his prior work accident and his motor vehicle accident;
- (2) plaintiff's New York State Disability records related to his prior accident;
- (3) the legal file related to plaintiff's motor vehicle accident;
- (4) the no-fault records related to plaintiff's motor vehicle accident;
- (5) the records of Westchester Square Hospital related to plaintiff's treatment after his motor vehicle accident;
- (6) records of Dr. Theodore Xenos;
- (7) records of Dr. Patrick Roth;
- (8) records of Dr. Nanna, who treated plaintiff for his prior heart condition;
- (9) plaintiff's union records from Local Carpenter's Union 157;
- (10) cardiology/pulmonology records from Dr. Stivaco;
- (11) records of Shore Heart Group; and
- (12) records of Interventional Pain Medicine & Rehabilitation.

Plaintiff contends that the affirmation of good faith provided by Clay is conclusory and insufficient to support the motion, and he denies that Clay establishes that the records sought are material and necessary or that it is entitled to unrestricted access to them. He specifically opposes only the request for Geisler's records, alleging that Geisler is a general practitioner and that Clay is not entitled to all of his records for his treatment of plaintiff unrestricted by time. (NYSCEF 67).

In reply, Clay details its numerous efforts to obtain the records from plaintiff and thus asserts that its affirmation of good faith is sufficient. It otherwise reiterates its prior arguments. (NYSCEF 70).

Given Clay's detailed attempts to obtain the records previously, its affirmation of good faith is sufficient. (*See Suarez v Shapiro Family Realty Assoc., LLC*, 149 AD3d 526 [1st Dept 2017] [affirmation of good faith not insufficient as movant established that any more attempts to resolve discovery dispute without judicial intervention would have been futile]).

As plaintiff's testimony and prior medical records indicate that the records sought by Clay may contain information material and necessary to the extent that they reference injuries and treatment related to those at issue in this action, Clay demonstrates its entitlement to them. However, as Geisler presumably treated plaintiff for unrelated injuries and conditions, Clay is not entitled to unrestricted access to his records.

Accordingly, it is hereby

ORDERED, that the motion to compel by third-party defendant Clay Drywall Inc. is granted to the extent of directing plaintiff to provide it, within 30 days of the date of this order, with duly-executed and HIPAA-compliant authorizations for the records listed above,

unrestricted in date and time, except as to the authorization for Geisler’s medical records, which may be restricted to records related to plaintiff’s back, neck, and heart condition.

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BARBARA JAFFE, J.S.C.

1/24/2022
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE