

Apollo v Steinhagen

2022 NY Slip Op 30377(U)

January 26, 2022

Supreme Court, New York County

Docket Number: Index No. 805082/2020

Judge: Kathy J. King

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J KING PART 6

Justice

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LESLIE APOLLO AND STEPHEN M. APOLLO

Plaintiff,

- v -

RANDOLPH STEINHAGEN, M.D. and
THE MOUNT SINAI HOSPITAL

Defendant.

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INDEX NO. 805082/2020

MOTION DATE

MOTION SEQ. NO. 001

DECISION/ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISSAL

Upon the foregoing documents and following a conference on September 23, 2021, it is ORDERED that defendant's Order to Show Cause seeking an order dismissing plaintiff's complaint pursuant to CPLR 3042; 3126 for their failure to provide outstanding discovery and a Bill of Particulars is hereby denied in part and granted in part. At the conference, the court denied defendant's request to dismiss plaintiff's complaint, and the parties were directed to exchange discovery and schedule a compliance conference. In addition, the court instructed the parties to submit letter briefs on the targeted discovery issue of authorizations for medical records from Memorial Sloan Kettering Cancer Center ("MSK") related to plaintiff's gastrointestinal tumor. Defendant requests an authorization for MSK with Section 9(a) fully executed. Plaintiff opposes.

Plaintiff argues that these medical records concerning plaintiff's gastrointestinal tumor, initially diagnosed in December 2019 and operated on January 3, 2020, are unrelated to the underlying claims of medical malpractice at issue here. Plaintiff's claims revolve around the incision and draining of a perianal abscess by defendant Randolph Steinhagen M.D. ("Dr.

Steinhagen” or “defendant”) on September 15, 2017, which caused plaintiff to suffer from excessive bleeding and anemia. Plaintiff contends that the Bill of Particulars do not claim or assert any nexus between the gastrointestinal tumor and the underlying procedure Dr. Steinhagen performed. Defendant asserts that the medical records related to the gastrointestinal tumor are relevant and necessary because those records may contain information about the existence of a tumor and offer an alternative explanation for the bleeding an anemia plaintiff claims. More specifically, defendant argues that gastrointestinal tumors have a propensity to bleed and are a slow growing type of tumor with a delayed diagnosis, which may have been present in 2017 at the time of the perianal abscess surgery.

CPLR 3101 (a) (1) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Terms “material and necessary” in this statute “must ‘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’” (*Matter of Kapon v. Koch*, 23 NY3d [2014], quoting *Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). At the same time, a party is “not entitled to unlimited, uncontrolled, unfettered disclosure” (*Geffner v. Mercy Med. Ctr.*, 83 AD3d 998, 998 [2d Dept. 2011]). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept. 1989]). “[T]he supervision of discovery is generally left to the trial court’s broad discretion” (*Geffner*, 83 AD3d at 998), and “each request must be evaluated on a case-by-case basis with due regard for strong policy supporting open disclosure” (*Andon v. 302-304 Mott St. Assoc.*, 94 NY2d 740, 747 [2000]).

Here, the court find that the medical records related to the gastrointestinal tumor are material and necessary for defendant to properly defend this matter. In particular, the gastrointestinal tumor directly speaks to damages in this case. Although the tumor appears to be unrelated as the diagnosis occurred in December 2019—roughly 2 years after the surgery Dr. Steinhagen performed, the tumor may have existed at the time of said surgery as defendant articulates. This, if true, would be material and necessary to defendant’s defense of this matter; and if, on the other hand, the tumor did not exist at the time of the underlying surgery, there is minimal prejudice to plaintiff’s prosecution of this matter as it is unlikely to cause much of a delay and any records related to the gastrointestinal tumor may be sealed.

Accordingly, it is hereby

ORDERED that defendant’s Order to Show Cause is denied in part and granted in part; and it is further,

ORDERED that defendant’s request to dismiss plaintiff’s complaint is hereby denied; and it is further,

ORDERED that defendant’s request for plaintiff to provide authorizations for MSK with Section 9(a) fully executed is hereby granted; and it is further,

ORDERED that plaintiff is to provide said authorizations within 45 days of the date this order is entered; and it is further

ORDERED that the parties are scheduled for a compliance conference on February 15, 2022; and it is further

ORDERED that the parties are directed to submit a compliance conference stipulation and order on consent setting for a discovery schedule on or before February 08, 2022, and if the

parties are unable to reach an agreement, they are directed to request a discovery conference before the court at sfc-part6-clerk@nycourts.gov.

This constitutes the decision and order of the court.

/s/ Kathy J King

1/26/2022

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