

<b>Siguencia v City of New York</b>
2022 NY Slip Op 31406(U)
April 28, 2022
Supreme Court, New York County
Docket Number: Index No. 161392/2018
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. SABRINA KRAUS **PART** **57TR**

*Justice*

-----X

FRANKLIN SIGUENCIA,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF EDUCATION, THE NEW YORK CITY  
SCHOOL CONSTRUCTION AUTHORITY

Defendant.

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**INDEX NO.** 161392/2018

**MOTION DATE** 01/31/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for DISCOVERY.

**BACKGROUND**

Plaintiff commenced this action to recover damages for alleged personal injuries sustained in a construction accident that occurred on April 23, 2018 at a New York City Public School known as PS 333, located at 154 West 93rd Street, New York, New York. The plaintiff was a union construction worker, employed by Hilt Construction, which was hired to perform exterior brick and façade work to the school. At the time of the accident the plaintiff was carrying an aluminum scaffold plank up a set of scaffold stairs. As the plaintiff carried the plank up the narrow stairs two (2) other workers descended the stairs at the same time. Plaintiff turned to let them pass, and in doing so, he was caused to fall down the scaffold stairs and sustain injuries. The Bill of Particulars alleges injuries to his left knee, right knee, back and right hip. It also alleges claims for a depressive disorder, Post-Traumatic Stress Disorder, and Post-Concussion syndrome.

### **PENDING MOTION**

On November 29, 2021, defendants moved for an order pursuant to CPLR §3101 and CPLR §3124, compelling plaintiff to respond to defendants' outstanding discovery demands, or, in the alternative, for an order, pursuant to CPLR § 3216, precluding plaintiff from offering evidence at the trial of this action.

The motion was fully briefed and submitted on January 28, 2022, and recently assigned to this court for determination. For the reasons stated below, the motion is granted.

### **DISCUSSION**

On or about October 15, 2020, defendants served a Notice for Discovery and Inspection upon plaintiff's counsel seeking authorization to obtain plaintiff's medical records regarding treatment for Gastris/GERD, pre- and post-accident.

On or about December 10, 2020, defendants served an additional Notice for Discovery and Inspection upon plaintiff's counsel seeking authorizations to obtain plaintiff's medical records of all treatment pre-accident regarding plaintiff's claim of loss of enjoyment of life.

Plaintiff denied the requests for authorization to obtain plaintiff's medical records regarding treatment for Gastris/GERD as well as plaintiff's medical records of all treatment pre-accident regarding plaintiff's claim of loss of enjoyment of life.

On June 2, 2021, defendants served a third Notice for Discovery and Inspection upon plaintiff's counsel seeking authorizations to obtain plaintiff's medical records from Dr. George Furla, Greater New York Gastroenterology, Dr. Carlos Serrano, and Aetna US Healthcare.

CPLR §3101(a) provides for "full disclosure of all matter material and necessary in the prosecution of an action."

The Courts have held that when a plaintiff alleges a loss of enjoyment of life claim, the "entire physical condition has been placed in controversy" which entitles the defendants to receive the requested authorizations. *Harris v. Teldaro Realty Co., LLC*, 2010 NY Slip Op 51283(U) (App. Term, First Dep't).

In *Caplow v. Otis Elevator Co.*, 176 A.D.2d 199, 199 (1st Dep't 1991), the plaintiff was treated for other medical conditions to his legs and feet, such as gout and cellulitis, after his accident and was involved in a subsequent accident. The Court determined that even though the plaintiff did not allege injuries to the legs and feet, he did treat "for gout and cellulitis at various times subsequent to the June 1987 accident, and thus medical records pertaining to these conditions, as they affected plaintiff subsequent to June 1987, might be useful in determining to what extent his claim for lost wages is attributable thereto, and not to the lower back injury he attributes to the June 1987 accident". *Id.*

The Court further concluded:

While plaintiff asserts that he makes no claim in this lawsuit for the injury sustained to his upper back in the May 1988 accident, but only for the injury sustained to his lower back in the June 1987 accident, his bill of particulars does seek lost wages for a period of time subsequent to May 1988. Accordingly, medical records pertaining to the upper back injury might be useful in determining to what extent plaintiff's post-May 1988 disability was attributable to the May 1988 accident, and not to the June 1987 accident (*supra*). *Id.*

As well, in *Rega v. Avon Products, Inc.*, 49 A.D.3d 329, 330 (1st Dep't 2008), the defendants sought authorizations for the plaintiff's medical records of prior and subsequent injuries. In the plaintiff's bill of particulars, the plaintiff alleged he sustained permanent injuries and was disabled as a result. The Court found the authorizations were relevant to the defense of the action and held the defendants were entitled to discovery to determine the extent to which the plaintiff's claimed injuries and damages were attributable to accidents other than the one at issue in that action.

Moreover, when a plaintiff is claiming he is disabled as a result of an accident, the "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'". *McGlone v. Port Authority of New York and New Jersey*, 90 A.D.3d 479 (1st Dep't 2011).

### **CONCLUSION**

WHEREFORE it is hereby:

ORDERED that plaintiff's motion to compel is granted to the extent of directing plaintiff to respond to all outstanding discovery requests within 60 days of service of this decision with notice of entry; and it is further

ORDERED that to the extent plaintiff alleges that he has no knowledge as to the identity of a Dr. George Furla, or that said records do not exist plaintiff is to submit an affidavit stating such facts; and it is further

ORDERED that counsel are directed to appear for a virtual status conference on June 26, 2022, at 3:30 PM; and it is further

ORDERED that, within 20 days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

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

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4/28/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: