

Hastings v New York City Health & Hosps.
2022 NY Slip Op 31599(U)
May 3, 2022
Supreme Court, New York County
Docket Number: Index No. 156699/2017
Judge: Leslie Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE STROTH
Justice

PART 52

-----X
CHRISTOPHER HASTINGS,
Plaintiff,

INDEX NO. 156699/2017
MOTION DATE 03/09/2022
MOTION SEQ. NO. 002

- v -

NEW YORK CITY HEALTH & HOSPITALS, NEW YORK
CITY HEALTH & HOSPITALS CORPORATION, GE
HEALTHCARE, INC.,
Defendant.

**DECISION + ORDER ON
MOTION**

-----X
NEW YORK CITY HEALTH & HOSPITALS, NEW YORK CITY
HEALTH & HOSPITALS CORPORATION
Plaintiff,

Third-Party
Index No. 595120/2020

-against-

GENERAL ELECTRIC HEALTHCARE D/B/A GE
HEALTHCARE INC
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65,
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83¹
were read on this motion to/for DISCOVERY

This is an action to recover monetary damages for personal injuries arising from an accident that allegedly occurred on May 31, 2016 at Metropolitan Hospital located at 1901 1st Ave., New York, New York. On that date, plaintiff was purportedly employed by non-party Medical Equipment Installation and hired by defendant GE Healthcare Inc. (GEHC) to upgrade/repair one of the hospital's magnetic resonance

¹ Defendant New York City Health and Hospitals filed a reply affirmation in support of its motion (*see* NYSCEF doc. 81), which co-defendant GE Healthcare Inc. rejected as an improper sur-reply (*see* NYSCEF doc. 82). Due to the safety issues potentially implicated in the resolution of the motion, as discussed *infra*, the Court accepts New York City Health and Hospitals' reply papers.

[* 1]

imaging (MRI) machines located in an MRI suite in a mobile trailer near the hospital's emergency department.

The subject MRI machine was manufactured by GEHC, which sold same to co-defendant New York City Health and Hospitals (NYCHH). Plaintiff alleges in his summons and verified complaint that while he was working as a technician on the MRI machine, he was injured as a result of his metal pocket-knife being pulled by the magnetic effect of the MRI machine. (See verified complaint at ¶ 7-12, NYSCEF doc. 1). GEHC now moves pursuant to CPLR 3124 and CPLR 3126 to compel co-defendant NYCHH to make available the MRI trailer at issue for a visual and/or photographic site inspection prior to plaintiff's deposition.

According to GEHC, NYCHH exclusively controls the operation of the MRI machine. GEHC argues that it has no knowledge or control of the exact location of the machine or the layout of the machine within the MRI trailer, and the parties have the right to conduct an inspection of the hospital site where the accident occurred. As NYCHH alone has such information, GEHC contends that an inspection of the site location is necessary. Plaintiff joins in GEHC's motion and contends that to deny the parties the opportunity to inspect the MRI trailer would cause unfair prejudice to both plaintiff and GEHC.

NYCHH objects and, pursuant to CPLR 3101, cross-moves for a protective order vacating or limiting plaintiff's and GEHC's request for an inspection of the mobile MRI trailer. Specifically, NYCHH raises safety concerns regarding any potential inspection due to the strong magnetic field created by the MRI machine. According to NYCHH, the MRI magnet is always on, 24 hours a day, 7 days a week, and no visual and/or photographic site inspection would be safe at any time for the hospital staff or for the attorneys that demand such inspection.

In fact, as noted by Alan R. Levy, attorney for GEHC, in his affirmation, because of the intense magnetic field generated by an MRI machine, the American College of Radiology has outlined four safety

zones in relation to how MRI machines are arranged and laid out in hospitals and medical facilities, with zones three and four denoted as “restricted access.” NYCHH specifically objects to any inspection of zone three (control room) and zone four (MRI magnet) and insists that those zones remain limited to MRI hospital staff. NYCHH does not discuss how patients are screened or through what channels patients are able to access the MRI machine.

NYCHH requests that the demands for an inspection be held in abeyance until the deposition of NYCHH’s Director of Radiology and Clinical Equipment, who will testify as to all aspects of the mobile MRI trailer and MRI suite, including all the safety and zone protocol requirements that would make an onsite inspection impossible. In the alternative, if the Court grants GEHC’s motion, NYCHH proposes certain safety protocols to ensure that the inspection is performed in a safe and orderly manner to minimize potential risk of injury to any of the participants, based on the American College of Radiology Manual on MR Safety, annexed as NYCHH’s Exhibit “A.”

CPLR 3101 (a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” However, “...unlimited disclosure is not mandated, and the rules provide that the court may issue a protective order ‘denying, limiting, conditioning or regulating the use of any disclosure device’ to ‘prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts’”. *Suchorzepka v Mukhtarzad*, 103 AD3d 878, 879 (2d Dept 2013), quoting *County of Suffolk v Long Is. Power Auth.*, 100 AD3d 944, 946 (2012), citing CPLR 3103. Nevertheless, where “...discovery demands are palpably improper in that they are overbroad, lack specificity, or seek irrelevant or confidential information, the appropriate remedy is to vacate the entire demand rather than to prune it.” *Bell v Cobble Hill Health Ctr., Inc.*, 22 AD3d 620, 621 (2d Dept 2005).

Here, GEHC's request to inspect the location of the accident is not so palpably improper as to require the vacatur of its entire discovery demand. An inspection of the subject location, which is not controlled by plaintiff or GEHC, cannot be said to be irrelevant or outside of the bounds of New York's broad policy of disclosure. Yet, this Court shares NYCHH's safety concerns, especially in light of the alleged incident giving rise to the instant matter. It is not disputed that an inspection of the MRI machine is potentially hazardous due to increasing magnetic field exposure, and safety restrictions must be strictly adhered to minimize projectile accidents. Moreover, both plaintiff's counsel and counsel for GEHC agree in their affirmations to submit to reasonable safety measures.

Therefore, the Court grants GEHC's request subject to the conditions requested by NYCHH and premised on the American College of Radiology's safety standards, as outlined below. However, the Court declines to mandate that plaintiff's counsel or GEHC's counsel purchase one-day-event insurance or to sign liability waivers, as NYCHH has failed to articulate the reasons for these requested provisions, other than the contentious nature of the litigation.

Accordingly, it is ORDERED that GE Healthcare Inc.'s motion to compel is granted as follows:

It is ORDERED that New York City Health and Hospitals shall make available for 90 minutes the MRI trailer located near the emergency department at Metropolitan Hospital for a visual site inspection of the relevant MRI machine; and it is further

ORDERED that inspection is limited to attorneys and experts who strictly follow all patient/employee screening pursuant to the American College of Radiology Manual on MR Safety, and the following procedures apply to such inspection: documentation involving health insurance must be completed, and medical screening questions including metal implants, pacemaker, body art, heart valve replacements, dental braces, hearings aids, implants and other sources of metal must be answered; attorneys/experts must follow hospital regulations regarding outside clothing and must remove all

medication patches, EKG patches, jewelry, and watches; items not permitted anywhere near the scanner include electronic devices such as cellphones or beepers, purse, wallet, money clip, credit card, hearing aids, pens, paper clips, keys, coins, pocket knives, hair pins, or any article of clothing not approved by the hospital; attorneys may only enter the site one at a time and be always guided, supervised, and monitored by hospital personnel/staff; and only trained hospital staff have access to the MRI machine, except for visual inspection as provided herein, and all orders from said staff must be adhered to; and it is further

ORDERED that GE Healthcare Inc.'s motion is limited to the extent that it requests a visual site inspection, and no photographic inspection shall be permitted within any magnetized area, given the potential danger in introducing a camera or cellphone to such a highly magnetized environment, and it is further

ORDERED that defendant shall, within 30 days from inspection of the aforesaid location, produce plaintiff for deposition, on a date and at a time convenient for the parties; and it is further

ORDERED that counsel are directed to appear for a status conference on June 15, 2022 at 4:00 p.m. to be held via Microsoft Teams, as previously scheduled.

This constitutes the decision and order of the Court.



LESLIE STROTH, J.S.C.

5/3/2022
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: