

Villanueva v J.T. Magen & Co. Inc.

2022 NY Slip Op 31946(U)

June 21, 2022

Supreme Court, New York County

Docket Number: Index No. 155823/2020

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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INDEX NO. 155823/2020

CARLOS VILLANUEVA,

Plaintiff,

MOTION SEQ. NO. 002

- v -

J.T. MAGEN & COMPANY INC., NORDSTROM, INC.,
BROADWAY 57TH/58TH RETAIL INVESTOR, LLC, 1790
BROADWAY ASSOCIATES LLC, and ULM I HOLDING
CORP.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for PRECLUDE.

In this personal injury action commenced by plaintiff Carlos Villanueva, defendants J.T. Magen & Company Inc., Nordstrom, Inc., Broadway 57th/58th Retail Investor, LLC, 1790 Broadway Associates LLC and ULM 1 Holding Corp. move, in effect, pursuant to CPLR 3124 and 3126, to: 1) preclude plaintiff from offering any evidence in support of his damages claims or, at the very least, to preclude plaintiff from offering any evidence at trial that he has injured his lumbar spine and has a “permanent instability to walk normally and/or work” and that he has “difficulty with prolonged sitting, walking, climbing stairs, lifting and carrying heavy objects, performing strenuous activities, finding a comfortable position and sleeping”; and 2) compelling plaintiff to provide unrestricted HIPAA compliant authorizations for all treatment and economic records relating to the plaintiff’s May 1, 2019 accident giving rise to this claim, as well as plaintiff’s 2012 workplace accident and 2016 motor vehicle accident; and 3) for such other and

further relief this Court deems just and proper. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this action in July 2020, alleging that he was injured on May 1, 2019 while working at a construction site owned, operated, controlled and/or managed by movants. In his bill of particulars, plaintiff claimed that, as a result of the incident, he sustained injuries to his lumbar spine and that he:

has a permanent instability to walk normally and/or work [and] has further suffered and continues to suffer pain and difficulty with prolonged sitting, walking, climbing stairs, lifting and carrying heavy objects, performing strenuous activities, finding a comfortable position and sleeping.

Additionally, plaintiff claims that he can no longer work and, as a result, has incurred \$148,750 in lost earnings.

During discovery, movants obtained the records of Iron Run Orthopedics, which reflected that plaintiff sustained a workplace injury in 2012, underwent bilateral knee arthroscopies in 2012 and 2013, and was advised of the possible need for total replacement of both knees. The records further reflected that plaintiff was involved in a 2016 automobile accident in which he sustained blunt force trauma to both knees, as well as injuries to his lumbar spine. Treatment records of Dr. Elizabeth Morrison also reflected that plaintiff acknowledged that he underwent bilateral knee arthroscopies following a workplace accident in 2012.

After learning of plaintiff's prior injuries and treatment, movants requested that plaintiff provide temporally unrestricted authorizations related to the May 2019 accident, as well as the 2012 workplace accident and 2016 motor vehicle accident. However, plaintiff refused to provide

unrestricted authorizations, and only provided an authorization allowing defendants to obtain plaintiff's records from the date of the 2016 accident to the present. Movants then filed the instant motion seeking the relief set forth above. In support of the motion, movants argue that the records they are seeking are clearly related to injuries alleged in the bill of particulars.

In opposition to the motion, plaintiff argues that he should not be ordered to provide movants with the authorizations demanded because they "go beyond the scope of permissible discovery". Specifically, plaintiff claims that the records sought relate to injuries which are clearly unrelated to the subject accident.

In reply, movants reiterate that they are entitled to obtain records relating to plaintiff's knees going back to 2012 and 2013, when he had bilateral arthroscopies.

LEGAL CONCLUSIONS

CPLR 3101(a) provides that "all matter material and necessary in the prosecution or defense of an action" should be fully disclosed (*see James v 1620 Westchester Ave. LLC*, 147 AD3d 575, 576 [1st Dept 2017] [citation omitted]). This Court has the discretion to direct what discovery is appropriate in a given case (*see Andon v 302-304 Mott. St. Assoc.*, 94 NY2d 740, 745 [2000]). The Appellate Division, First Department has held that information is discoverable where it is relevant to prior similar injuries, or could lead to evidence regarding the extent or permanency of plaintiff's claimed injuries (*see Kennedy v Ware*, 201 AD3d 589, 589-590 [1st Dept 2022]).

As noted previously, plaintiff alleges in his bill of particulars that he has difficulty walking and working, and that he continues to suffer pain and difficulty with, inter alia, prolonged sitting, walking, climbing stairs, and lifting and carrying heavy objects. Given these allegations, this Court agrees with movants that they are entitled to unrestricted HIPAA

compliant medical authorizations, as well as employment authorizations, regarding plaintiff's 2012 workplace injury, his bilateral arthroscopies in 2012 and 2013, at or about which time he was told that he may need replacement of both knees, as well as authorizations for all medical treatment relating to a 2016 motor vehicle accident in which he sustained blunt force trauma to both knees and injuries to his lumbar spine, plus any records regarding any lost earnings as of that automobile accident. Defendants are also entitled to unrestricted HIPAA compliant medical authorizations relating to the 2019 accident which is the subject of this action, as well as records regarding any lost earnings sustained as a result of the said incident.

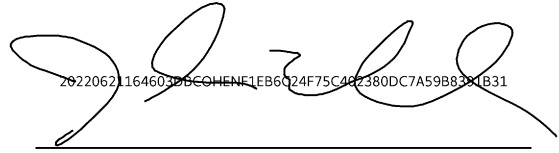
This Court declines movants' request to preclude plaintiff from offering evidence at trial since there is no indication that plaintiff engaged in willful, contumacious or bad faith conduct (*see Marquez v 171 Tenants Corp.*, 161 AD3d 646 [1st Dept 2018]).

Accordingly, it is hereby:

ORDERED that the motion by defendants J.T. Magen & Company Inc., Nordstrom, Inc., Broadway 57th/58th Retail Investor, LLC, 1790 Broadway Associates LLC and ULM 1 Holding Corp. is granted to the extent that, within 20 days of the entry of this order, plaintiff's attorney shall provide movants with: 1) unrestricted HIPAA-compliant authorizations releasing all medical and employment records associated with plaintiff's July 2012 workplace accident resulting in injuries to both of his knees; 2) unrestricted HIPAA-compliant authorizations releasing all medical and employment records associated with plaintiff's 2016 motor vehicle accident resulting in injuries to both of his knees and his lumbar spine; and 3) unrestricted HIPAA-compliant authorizations releasing all medical and employment records associated with plaintiff's 2019 accident which is the subject of the captioned action, and the motion is otherwise denied; and it is further

ORDERED that the parties are to appear for a previously scheduled compliance conference on August 2, 2022, at 10:00 a.m.

6/21/2022
DATE



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DAVID B. COHEN, J.S.C.

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