

Starkman v Lipton
2022 NY Slip Op 34399(U)
December 20, 2022
Supreme Court, Kings County
Docket Number: Index No. 502963/2015
Judge: Bernard J. Graham
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At an IAS Part 36 of the Supreme Court of The State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 20th day of December, 2022.

P R E S E N T :

Hon. Bernard J. Graham, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ALLISON STARKMAN, Individually, and as
Administrator of the Estate of SUSAN MEISLER,

Plaintiff(s),

Index No. 502963/2015

-against-

DECISION/ORDER

MITCHELL E. LIPTON, M.D., MITCHELL E. LIPTON,
M.D., P.C., PRASAD SUNKAVALLI, M.D.,
BROOKLYN PSYCHIATRIC CENTERS, INC.,
ASTROCARE, INC. and CANARSIE MENTAL
HEALTH CLINIC,

Defendant(s).

Recitation, as required by CPLR §2219(a), of the papers considered on the review of this motion to: dismiss plaintiff's complaint, pursuant to CPLR §3212.

Papers	NYSCEF Doc. #
Notice of Motion and Affidavits Annexed.....	(seq. 10) 310-327 (seq. 11) 342-349
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits.....	(seq. 10) 330-332 (seq. 10) 333-341
Replying Affidavits.....	(seq. 10) 351
Exhibits.....	
Other.....	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Counsel for plaintiff has moved (seq. 10) for an Order, pursuant to CPLR §3204, quashing defendant Prasad Sunkavalli, M.D.'s ("Dr. Sunkavalli") subpoena seeking the

non-party deposition of Lauren Meisler (“Ms. Meisler”), who is the daughter of the decedent, upon the grounds that Ms. Meisler’s mental health diagnoses and diminished intellectual capacity would render her testimony unreliable. In addition, it is alleged that having to give such testimony would have a detrimental impact on Ms. Meisler’s physical and mental well being. Counsel for plaintiff also seeks a protective order, pursuant to CPLR §3103(a), blocking the deposition of Ms. Meisler in this action.

Opposition has been offered by counsel for defendant Mitchell E. Lipton, M.D. and Mitchell E. Lipton, M.D., P.C., (“Dr. Lipton”), as well as counsel for defendant Astrocare, Inc. (“Astrocare”), arguing that Ms. Meisler is neither incompetent nor incapable to testify, as she has previously given deposition testimony in an action involving allegations related to an incident in which Ms. Meisler nearly drowned.

Counsel for defendant Dr Sunkavalli, the subpoenaing party, has cross-moved (seq. 11) to compel the non-party deposition of Ms. Meisler, or in the alternative, to schedule a hearing to determine the competency of Ms. Meisler to appear for a deposition, upon the same grounds as stated in co-defendants’ opposition to plaintiff’s motion to quash the subpoena.

Argument was heard on November 17, 2022 on Microsoft Teams before the undersigned.

CPLR §3101(a)(4) states that “there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by... (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.”

The burden rests upon the movant seeking to quash the non-party subpoena to establish that “the futility of the process to uncover anything legitimate is inevitable or obvious...or [that] the information sought is ‘utterly irrelevant to any proper inquiry.’” Kapon v Koch, 23 NY3d 32, 38 [2014]. Counsel for plaintiff argues that although Ms. Meisler lived with the decedent in the years leading up to her death, any testimony Ms. Meisler could give would be unreliable due to her intellectual handicap and the severe psychological disorders she is currently being treated for. Counsel for plaintiff has

offered the opinion of Dimple Sodhi, M.D. (“Dr. Sodhi”), Ms. Meisler’s current treating psychiatrist, who states that due to her “limited coping skills” along with her limited ability to process information,” “questioning Lauren in reference to her mother and the circumstances surrounding her death would be unreliable and can be detrimental to Lauren’s mental health.” See NYSCEF Doc. 323, annexed to Plaintiff’s motion as Exhibit L.

Once the movant has met their burden, the subpoenaing party must demonstrate that the requested discovery is “material and necessary”, pursuant to CPLR §3101(a)(4). The “material and necessary” standard “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.” Kapon v Koch, 23 NY3d 32, 38 [2014]. So long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the non-party. Kapon v Koch, 23 NY3d at 38.

Counsel for defendant Dr. Sunkavalli, the subpoenaing party, asserts that Ms. Meisler is competent to give deposition testimony, as she gave extensive cogent testimony in support of her own personal injury action on December 12, 2018, which involved a traumatic incident which nearly resulted in Ms. Meisler drowning in a pond. Defendant Dr. Sunkavalli argues that, prior to her deposition in December 2018 there was an inquiry into Ms. Meisler’s competency, after which it was confirmed that she knew, for example, what day of the week it was, what her attorney’s role was, the judge’s role, and the difference between telling the truth and a lie, after which Ms. Meisler was sworn in. See NYSCEF doc. 337, annexed to defendant’s opposition as Exhibit D. In addition, counsel for defendant has established that Ms. Meisler may have knowledge bearing on the issues of liability and damages in this action, specifically the condition of her mother leading up to her death on July 19, 2013. Kelly v Shafiroff, 80 AD2d 601 [2d Dept 1981]. Although Ms. Meisler is not a party to this action, this Court notes that she does have an interest in the outcome of the action, as plaintiff is seeking damages for loss of guidance for Ms. Meisler, the allegedly disabled adult child of the decedent. Based on the

foregoing, this Court finds that the deposition testimony of Ms. Meisler would be relevant to the prosecution and defense of the action, given the fact that Ms. Meisler lived with and cared for the decedent until her death, and such testimony would assist preparation for trial.

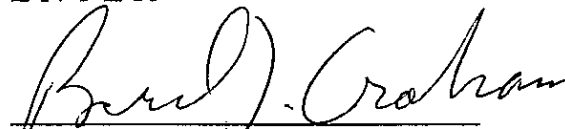
Accordingly, plaintiff's motion (seq. 10) to quash defendant Dr. Sunkavalli's subpoena seeking the non-party deposition of Ms. Meisler is denied. Defendant Dr. Sunkavalli's cross-motion (seq. 11) to compel the deposition of Ms. Meisler is granted.

Defendant Dr. Sunkavalli is to re-submit the judicial subpoena pertaining to Ms. Meisler's deposition.

This shall constitute the decision and order of this Court.

Dated: December 20, 2022
Brooklyn, NY

ENTER



Hon. Bernard J. Graham, Justice
Supreme Court, Kings County

HON. BERNARD J. GRAHAM