

Casazza v Poughkeepsie Crossing, LLC
2022 NY Slip Op 35204(U)
March 16, 2022
Supreme Court, Dutchess County
Docket Number: Index No. 2018-53505
Judge: Maria G. Rosa
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

CAROL CASAZZA, Deceased, by and through
CHERYL WINTERHALT, as Executrix of the Estate
of CAROL CASAZZA,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 2018-53505

POUGHKEEPSIE CROSSING, LLC,
POUGHKEEPSIE CROSSING, LLC d/b/a THE
PINES AT POUGHKEEPSIE CENTER FOR
NURSING AND REHABILITATION, THE PINES
AT POUGHKEEPSIE CENTER FOR NURSING
AND REHABILITATION and NATIONAL
HEALTHCARE ASSOCIATES INC.,

Defendants.

Motion Sequence: 2

The following papers were read on Plaintiff's motion, pursuant to CPLR §3124, to compel the production of certain discovery:NOTICE OF MOTION
AFFIRMATION OF GOOD FAITH
AFFIRMATION IN SUPPORT
EXHIBITS A - Z

AFFIRMATION IN OPPOSITION

REPLY AFFIRMATION

This is an action for alleged nursing home neglect/abuse and wrongful death while Decedent, Carol Casazza, was a resident at the Defendant nursing home facility from October 31, 2016 through November 27, 2016. Plaintiff commenced this action on November 6, 2018, asserting violations under Public Health Law §§2801-d and 2803-c, as well as claims for negligence, gross negligence and wrongful death. An impasse having been reached following various exchanges between the parties and conferences before this Court to resolve disputes about outstanding discovery, the Court granted Plaintiff leave to file the instant motion to compel disclosure.

“The basis for liability under the [Public Health Law] is neither deviation from accepted standards of medical practice nor breach of a duty of care. Rather, it contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule” (*Henry v Sunrise Manor Ctr. for Nursing and Rehabilitation*, 147 AD3d 739, 741 [2d Dept 2017])[quotation and citation omitted]. CPLR §3101 (a) entitles parties to “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof” and includes “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). This Court is to interpret the words “material and necessary” liberally and permit disclosure upon any facts bearing on the controversy which will assist a party in preparation for trial (*Kapon v Koch*, 23 NY3d 32 [2014]). “[D]iscovery determinations are discretionary; each request must be evaluated on a case-by-case basis with due regard for the strong policy supporting open disclosure” (*Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 747 [2000]). Pursuant to CPLR §3124, if a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, the party seeking disclosure may move to compel compliance or a response.

The Court finds that Plaintiff is entitled to discovery of the items listed below as these documents are material and necessary to the prosecution of this action for nursing home negligence and violations of Public Health Law §§2801-d and 2803-c. Inasmuch as Defendants are compelled by statute and regulation to maintain and continuously collect such information, and Plaintiff has included a narrow time-period for the documents requested, the demands are not overly broad or burdensome (*see* Public Health Law §§ 2803-c and 2805-e; 10 NYCRR §§ 415.3; 415.26; 415.30; *Grant v Paljr, LLC*, 64 AD3d 750, 751 [2d Dept 2009]; *Clement v Kateri Residence*, 60 AD3d 527 [1st Dept 2009]; *Simmons v Northern Manhattan Nursing Home, Inc.*, 52 AD3d 351 [1st Dept 2008]). The Court notes that whether documents are publically available does not preclude production of those documents from a party (*see Alfaro v Schwartz*, 233 AD2d 281, 282 [2d Dept 1996]; *Z.D. v MP Management, LLC*, 150 AD3d 550, 552 [1st Dept 2017]). Thus, even though certain records could be obtained by Plaintiff from the Department of Health via a FOIL request, this does not obviate Defendants’ obligation to produce those records. As such, it is hereby

ORDERED that Plaintiff’s motion to compel is granted in part and Defendants shall produce documents responsive to the following demands:¹

1. Item 8 - Writing furnished to Decedent, **to the extent not already produced;**
2. Item 11 - All communications between Staff, **to the extent not already produced;**
3. Item 12 - Decedent’s personal non-medical record
4. Item 13 - Requests for payment, **to the extent not already produced;**
5. Item 14 - General fiscal record for Decedent, **to the extent not already produced;**

¹The Court’s short-hand and reference to the demands and responses contained in the record on this motion is used to provide a description of what is demanded and should not be read as limiting the demand in anyway.

6. Item 15 - Complaints made by or on behalf of the Decedent and Defendants' Response to said complaints;
7. Item 16 - Visitor Sign-in Logs;
8. Item 20 - surveys, statements of deficiencies and plans of correction
9. Item 21 - License and registration
10. Item 22 - Orientation Program
11. Item 23 - Organizational Chart
12. Item 24 - Master Plan for Staffing
13. Item 26 - Staff medical policies
14. Item 27 - Personnel policies
15. Item 28 - Daily Staff Assignment Sheets
16. Item 29 - Daily Census Data
17. Item 30 - Case Mix Index
18. Item 31 - Operating License
19. Item 32 - Mission statement
20. Item 33 - Statement of rights and responsibilities
21. Item 35 - CASPER reports
22. Item 36 - Disclosure of ownership
23. Item 37 - Copies of any staffing waivers granted to Defendants' facility pursuant to 42 CFR §483.30(c); **however, this Demand is limited to those waivers in effect during Decedent's residency.**
24. Item 38 - Reports relating to abuse, neglect or mistreatment
25. Item 40 - Nurse Aide Training Manual

And it is further

ORDERED that to the extent any of the above listed items were previously produced in the Bates-stamped chart, Defendants shall advise Plaintiff of same and as to which Bates-stamped pages the records can be found. Defendants shall affirmatively advise Plaintiff whether Defendants have any additional documents, and to the extent they do have additional documents, they shall be produced within 30 days of the date of this Order.

With respect to Items 17, 18 and 19 seeking accident/incident records, negative outcome/incident reports, and policies related to same, Defendants aver that they have already responded that they are not in possession of any such documents. As such, it is hereby

ORDERED that Plaintiff's motion to compel as to Items 17, 18 and 19 is denied.

As to Items 34 (sales and marketing documents), 39 (Contracts), and 41 (Contracts), the Court finds that these request are not material and necessary to the prosecution of the instant action. As such, it is hereby

ORDERED that Plaintiff's motion to compel as to Items 34, 39 and 41 is denied; and it is

further

ORDERED that the parties shall appear for a compliance conference on May 9, 2022 at 9:15am.

The foregoing constitutes the decision and order of the Court.

Dated: March 16, 2022
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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