

Hastings v New York City Health & Hosps.

2023 NY Slip Op 30608(U)

February 28, 2023

Supreme Court, New York County

Docket Number: Index No. 156699/2017

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 52

Justice

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CHRISTOPHER HASTINGS,

Plaintiff,

INDEX NO. 156699/2017

MOTION DATE 12/07/2022

MOTION SEQ. NO. 003

- v -

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

**DECISION + ORDER ON
MOTION**

Defendant.

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NEW YORK CITY HEALTH & HOSPITALS, NEW YORK CITY
HEALTH & HOSPITALS CORPORATION

Third-Party
Index No. 595120/2020

Plaintiff,

-against-

GENERAL ELECTRIC HEALTHCARE D/B/A GE
HEALTHCARE INC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

Defendant GE Healthcare, Inc. ("GE") moves pursuant to CPLR §§ 3124 and 3126 for an order: Striking the answer of defendant/third-party plaintiff New York City Health and Hospital Corporation ("HHC" or "NYCHH") for failure to provide discovery; and/or precluding HHC from introducing testimony and/or evidence at trial; and/or compelling HHC to comply with all outstanding discovery demands. HHC cross-moves to compel GE to respond to its notices for Discovery & Inspection dated February 18, 2020, July 22, 2021, and August 14, 2021.

The plaintiff in this matter was a field service installation technician who was employed to upgrade the Magnetic Resonance Imaging (“MRI”) machine at Metropolitan Hospital, which is owned by HHC. The plaintiff was allegedly injured when the magnet from the MRI pulled a knife from the plaintiff’s pocket, causing it to strike him in the eye. This court had previously ordered HHC to make the MRI trailer available for a visual inspection of the MRI machine (NYSCEF Doc. 85, 5/3/2022 Decision and Order). However, prior to the inspection occurring, the MRI machine involved in plaintiff’s accident was discarded and replaced, due to a 6/24/22 malfunction, with a new MRI machine, and the trailer present at the time of the incident was also “swapped out” with an identical model (*see* Exh. C, Sudol email). Thereafter, GE served a supplemental notice for discovery and inspection on HHC seeking the following:

1. Identify all individuals involved in, and who have relevant knowledge of the decision and action of the subject Mobile MRI Trailer being “discarded and replaced”, which was disclosed to all parties on 7/21/22.
2. Identify and produce all documents reflecting communications between NYCHH, NYC Metropolitan Hospital, and any other entities relating to the decision and action of the subject Mobile MRI Trailer being “discarded and replaced”, which was disclosed to all parties on 7/21/22.
3. Identify and produce all documents regarding the decision and action of the subject Mobile MRI Trailer being “discarded and replaced”, which was disclosed to all parties on 7/21/22.
4. Identify and produce all documents regarding the any contracts or written agreements with NYCHH’s vendor, Mobile MRI Rental, regarding the subject Mobile MRI Trailer which was disclosed to all parties on 7/21/22.

5. Identify the date the subject Mobile MRI Trailer was discarded by NYCHH.
6. Identify and produce all documents regarding the alleged 6/24/22 “malfunction” of the subject MRI Machine which was disclosed to all parties on 7/21/22.
7. Identify and produce all documents regarding the alleged new Mobile MRI Trailer which was allegedly “swapped out” as stated by counsel for NYCHH to all parties on 7/21/22.
8. Identify all individual representatives of NYCHH and NYC Metropolitan Hospital who were aware of the May 3, 2022, Order of the Hon. Leslie Stroth, J.S.C. compelling NYCHH to make the subject Mobile MRI Trailer available for inspection in this case.
9. Identify the date that representatives of NYCHH and NYC Metropolitan Hospital were made aware of the May 3, 2022, Order of the Hon. Leslie Stroth, J.S.C. compelling NYCHH to make the subject Mobile MRI Trailer available for inspection in this case.
10. Identify and produce all documents reflecting communications between NYCHH, NYC Metropolitan Hospital, and any other entities relating to the efforts of complying with the May 3, 2022, Order of the Hon. Leslie Stroth, J.S.C. compelling NYCHH to make the subject Mobile MRI Trailer available for inspection in this case. (To the extent that any such documents are identified as privileged, please produce an appropriate privilege log.)

(Exh. E, Supplemental Notice for Discovery & Inspection). HHC’s response merely set forth boiler plate responses – the response to each demand was identical: “Defendant objects to this demand on the grounds that it is overly broad in scope, unduly burdensome, palpably improper, not reasonably calculated to lead to the discovery of admissible evidence and protected by a privilege” (Exh. G, Response to Supplemental Notice for Discovery & Inspection). In light of the potential spoliation of the evidence in this matter, the court finds that the above demands are not overly broad in scope, unduly burdensome, palpably improper, or not reasonably calculated

to lead to the discovery of admissible evidence in this matter. Accordingly, HHC should provide responses. To the extent that said response contends that a request is overly broad, improper, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence, it shall provide a detailed, individualized reason for objecting to each response. To the extent that HHC contends that any responsive item is privileged, it shall provide a privilege log.

HHC’s motion to compel discovery is denied as moot. Subsequent to the filing of the motion, GE provided discovery responses. To the extent that HHC finds the discovery responses lacking, they may seek the court’s permission to make a further motion to compel.

For the reasons set forth hereinabove, it is hereby

ORDERED that the motion of GE Healthcare, Inc is GRANTED to the extent that New York City Health and Hospital Corporation shall reply to the supplemental notice for discovery & inspection dated August 5, 2022, within 90 days of service of a copy of this Order with Notice of Entry; and it is further

ORDERED that if the response contains objections, they are to be detailed, and if privilege is asserted, shall be accompanied by a privilege log; and it is further

ORDERED that the motion of New York City Health and Hospital Corporation is DENIED as moot.

This constitutes the decision and order of this court.

2/28/2023
DATE


NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE