

Palazzo v Chanel, Inc.
2023 NY Slip Op 31072(U)
April 4, 2023
Supreme Court, New York County
Docket Number: Index No. 158476/2018
Judge: Francis A. Kahn III
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III
Justice

PART 32

GREGORY PALAZZO,
Plaintiff,

INDEX NO. 158476/2018

MOTION DATE

MOTION SEQ. NO. 001 002 003

- v -

CHANEL, INC., SHAWMUT DESIGN AND CONSTRUCTION, THE KNOLLER COMPANIES, INC.,
Defendant.

DECISION + ORDER ON MOTION

CHANEL, INC., SHAWMUT DESIGN AND CONSTRUCTION
Plaintiff,

Third-Party
Index No. 595671/2019

-against-

THE KNOLLER COMPANIES, INC., ALBIREO ENERGY, LLC
Defendant.

CHANEL, INC., SHAWMUT DESIGN AND CONSTRUCTION
Plaintiff,

Second Third-Party
Index No. 595923/2020

-against-

HARRAND ELECTRICAL CONTRACTORS, INC.
Defendant.

CHANEL, INC., SHAWMUT DESIGN AND CONSTRUCTION
Plaintiff,

Third Third-Party
Index No. 595600/2021

-against-

THE KNOLLER COMPANIES, INC.,
Defendant.

ALBIREO ENERGY, LLC

Fourth Third-Party
Index No. 595705/2022

Plaintiff,

-against-

HARRAND ELECTRICAL CONTRACTORS, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 170, 183, 186, 189, 190, 195, 196, 201, 202

were read on this motion to/for ORDER OF PROTECTION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 184, 188, 197, 198, 205, 206

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 185, 187, 199, 200, 203, 204

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the motions are determined as follows:

Plaintiff Gregory Palazzo commenced this action to recover for personal injuries sustained on August 8, 2018, while working at a construction site as an electrician. He claims the incident occurred when he was caused slip or trip and fall on debris. In the complaint, Plaintiff pled claims under Labor Law §§241[6], 240, 200, and common-law negligence. In his bills of particulars, Plaintiff claims he sustained injuries to his cervical spine, back, left elbow, and left ankle as well as “[a]ctivation of any pre-existing degenerative changes . . . that were entirely asymptomatic” to each. After joinder of issue, and the commencement of five third-party actions, nearly five years of discovery followed which includes some seven conferences with the Court.

Now, Plaintiff (Mot Seq No 1), Defendants The Knoller Companies, Inc. (Mot Seq No 2), as well as Defendants Chanel, Inc. and Shawmut Woodworking & Supply, Inc. (Mot Seq No 3) all file motions related to disclosure. All the motions are opposed, in one form or another.

Plaintiff moves for “a protective order as to defendants and third-party defendants, CHANEL, INC., SHAWMUT DESIGN AND CONSTRUCTION, THE KNOLLER COMPANIES, INC., ALBIREO ENERGY, LLC, and HARRAND ELECTRICAL CONTRACTORS, INC., to prevent the discovery of health information pertaining to mental health and substance abuse, both through a deposition and through paper discovery, and any other information that is unrelated to the claims made in this case and not claimed within Plaintiff’s Verified Bill of Particulars”.

Defendant/Third-Party/Third Third-Party/Fourth Third-Party Plaintiff The Knoller Companies, Inc. moves for an order:

- a. Compelling Plaintiff to provide authorizations related to his prior accident of April 18, 2017;

- b. Compelling Plaintiff to produce records related to his alleged substance abuse treatment from two years prior to the accident to present;
- c. Compelling Plaintiff to respond to questions related to his substance abuse and their impact on his treatment, alleged limitations and economic loss allegations

Defendants/First, Second, and Third-Third Party Plaintiffs Chanel, Inc. and Shawmut Woodworking & Supply, Inc. d/b/a Shawmut Design and Construction move “to compel the plaintiff to respond to the movants’ discovery demands dated August 31, 2022 and October 12, 2022 by tendering the demanded duly-executed record authorizations”.

In civil litigation in New York, “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” (see CPLR §3101[a]; *Forman v Henkin*, 30 NY3d 656 [2018]). “The phrase ‘material and necessary’ should 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. The test is one of usefulness and reason’” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; see also *Andon v 302-304 Mott St Assoc.*, 94 NY2d 740, 746, [2000]). This does not mean disclosure is limitless and courts are empowered to oversee discovery and set reasonable terms for its exchange (see generally *Diako v Yunga*, 148 AD3d 438 [1st Dept 2017]; *Elmore v 2720 Concourse Associates, L.P.*, 50 AD3d 493 [1st Dept 2008]).

A court’s discretion to regulate disclosure is wide (see CPLR §3126; *Forman v Henkin*, supra) and includes the power to “make a protective order denying, limiting, conditioning or regulating the use of any disclosure device” (CPLR §3103). “The nature and degree of the penalty to be imposed pursuant to CPLR §3126 lies within the sound discretion of the Supreme Court” (*Kihl v Pfeffer*, 94 NY2d 118, 122–123 [1999]; see also *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74 [2010]). The striking of a pleading may be an appropriate sanction, but only upon a clear showing that the non-compliance was willful or contumacious (see eg *Ewa v City of New York*, 186 AD3d 1195 [2d Dept 2020]). “The willful or contumacious character of a party’s conduct can be inferred from the party’s repeated failure to respond to demands and/or to comply with discovery orders” (see *Dank v Sears Holding Management Corp.*, 69 AD3d 557 [2d Dept 2010]).

With respect to Plaintiff’s alleged substance abuse history, “a party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR (see CPLR 3121, subd [a]) when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue” (*Cynthia B. v New Rochelle Hosp. Med. Ctr.*, 60 NY2d 452, 456-457 [1983] [citation omitted]). “The burden of proving that a party’s mental or physical condition is in controversy, for purposes of obtaining relevant hospital records, is on the party seeking the records” (*Budano v Gurdon*, 97 AD3d 497, 497 [1st Dept 2012]). Here, Defendants have not proffered anything to establish a connection between Plaintiff’s alleged substance abuse history and the cause of the accident, his injuries or his ability to recover therefrom (see *Gough v Panorama Windows, Ltd.*, 133 AD3d 526 [1st Dept 2015]; *Budano v Gurdon*, supra at 499; see also *James v 1620 Westchester Ave. LLC*, 147 AD3d 575 [1st Dept 2017]). Conspicuously absent is the required expert affidavit in support of such a supposed connection (*id.*).

Moreover, Plaintiff has not pled in his bills of particulars that he sustained emotional or psychological injury, nor does he seek recompense for loss of enjoyment of life (see *Quinones v 9 E. 69th St., LLC*, 132 AD3d 750, 751 [2d Dept 2015]). In any event, "alleged general anxiety and mental anguish from back and leg injuries do not place [a plaintiff's] entire mental and physical health into contention" (*James v 1620 Westchester Ave. LLC*, 147 AD3d 575, 576 [1st Dept 2017]; see also *Abrew v Triple C Props., LLC*, 178 AD3d 526 [1st Dept 2019]).

With respect to injuries Plaintiff allegedly sustained to his left foot or ankle in a prior accident, Defendants have demonstrated this body part was placed in issue by Plaintiff claiming injuries to his left ankle and activation of dormant degenerative changes (see *eg Walters v Sallah*, 109 AD3d 401 [1st Dept 2013]). Plaintiff's attempt to parse the prior injury as one to the foot as opposed to the ankle herein is nothing more than an exercise in semantics.

Accordingly, it is

ORDERED that Plaintiff's motion (MS No 1) is granted to the extent that Plaintiff is granted a protective order prohibiting discovery as to his alleged substance abuse history, but otherwise denied; and it is

ORDERED that Defendants' motions (MS Nos and 3) are granted to the extent that Plaintiff shall provide responses to Defendants' discovery demands related to Plaintiff's prior injury to his left foot/ankle, but otherwise denied, and it is

ORDERED that to the extent that any other outstanding unobjected to demands by any party have not been responded to, a formal response shall be tendered in 45 days from efileing of this order.

The parties are reminded that a status conference is scheduled in this matter on **May 3, 2023 @ 10:40am**.

4/4/2023
DATE

CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED SUBMIT ORDER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT

INCLUDES TRANSFER/REASSIGN OTHER REFERENCE

J. A. Kahn III
FRANCIS A. KAHN III, A.J.S.C.
HON. FRANCIS A. KAHN III
NON-FINAL DISPOSITION J.S.C.