

Best v City of New York

2023 NY Slip Op 32068(U)

June 23, 2023

Supreme Court, New York County

Docket Number: Index No. 156121/2018

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

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TYHESIA BEST,

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 156121/2018

MOTION DATE 02/14/2023

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion for DISCOVERY.

On June 29, 2018, plaintiff commenced this action asserting claims sounding in, inter alia, false arrest, false imprisonment, malicious prosecution, and assault and battery.

Defendant the City of New York (the "City") now moves, pursuant to CPLR §3124, to compel plaintiff to produce documents responsive to its outstanding discovery demands outlined in a letter to plaintiff dated May 16, 2022. Specifically, the City seeks: (1) duly executed HIPAA- and Arons-compliant written authorizations releasing all records pertaining to plaintiff's examination and treatment by her private OB-GYN and New York Presbyterian in relation to the miscarriage referenced in her EBT (Examination Before Trial) testimony (NYSCEF Doc. No. 36 [Best EBT at pp. 49-50]); (2) duly executed HIPAA- and Arons-compliant written authorization to allow the City to obtain plaintiff's records for all medical treatment and/or examination relating to plaintiff's pregnancies and miscarriages which took place prior to her arrest, including the name of the doctor, hospital, and/or medical provider who provided any treatment/examination (3) written authorizations for tax and employment records for 2016 through 2018, including records

of plaintiff's work at New York Sports Club and as a recording artist; and (4) documents recording the amounts of special damages set forth in plaintiff's Bill of Particulars (e.g., lost wages and income, property damage to personal property in her apartment); and (5) plaintiff's correspondence with the New York City Housing Authority ("NYCHA") regarding her arrest, including any correspondence as to her "emergency" transfer to another apartment subsequent to this arrest. The City also seeks an order compelling plaintiff to appear for a further EBT as well as an independent medical examination ("IME"). Plaintiff has not submitted any opposition to this motion, despite being granted multiple extensions of time by this Court to do so. Accordingly, the motion is granted on default and for the reasons set forth below.

DISCUSSION

The City's motion is granted in its entirety. CPLR §3101(a) mandates that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action" and the City has met its burden to establish that the material sought is material and relevant to its defense against plaintiff's claims.

Specifically, the City has established that medical records concerning the medical treatment related to pregnancy and miscarriage are relevant to the allegations set forth in plaintiff's Verified Bill of Particulars. The City has further established that plaintiff's employment records and tax returns are relevant to her alleged damages for loss of income resulting from the loss of her employment due to arrest. Finally, the City has established that plaintiff's correspondence with NYCHA regarding her arrest is relevant in light of her EBT testimony that, as a result of her arrest, she requested an emergency transfer from her former apartment (the location of her arrest) to a new residence (NYSCEF Doc. No. 36 [Best EBT at pp. 22-23]).

In light of the foregoing, the Court agrees with the City that a post-discovery IME (Independent Medical Examination) and a further EBT of the plaintiff concerning the issues set forth above is warranted (See CPLR §3121[a]). Plaintiff's EBT shall take place after plaintiff produces the court-ordered material herein and within the time frames directed below.

Accordingly, it is

ORDERED that plaintiff is to produce duly-executed HIPAA- and Arons-compliant written authorizations for the release of any and all medical records related to her treatment by her OB-GYN and New York Presbyterian Medical; and it is further

ORDERED that plaintiff is to produce duly-executed HIPAA and Arons-compliant written authorizations for the release of all records of her medical treatment relating to all prior pregnancies and miscarriages, if any, including the name of the doctor, hospital, and/or medical provider who provided any such treatment or examination; and it is further

ORDERED that plaintiff is to produce duly-executed HIPAA and Arons- compliant written authorizations for all records related to her treatment at the Lenox Hill and Newark University Center; and it is further

ORDERED that plaintiff is to produce duly-executed written authorizations for the release of any employment and tax records for the years 2016, 2017, and 2018 from any of her employers from these three years; and it is further

ORDERED that plaintiff is to produce written proof/documents relating to any other special damages she claims in this action, including, but not limited to, her allegedly damaged iPad and storage facility costs, and it is further

ORDERED that plaintiff is to produce any and all correspondence with NYCHA regarding her post-arrest transfer to a new apartment; and it is further

ORDERED that plaintiff is to produce the foregoing material on or before August 31, 2023; and it is further

ORDERED that plaintiff is to appear for an examination before trial on or before September 15, 2023; and it is further

ORDERED that the City of New York is to produce a witness for deposition on or before September 29, 2023; and it is further

ORDERED that plaintiff is to appear for an independent medical examination on or before October 13, 2023; and it is further

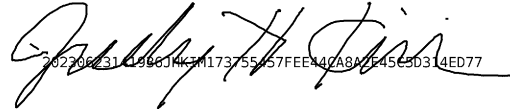
ORDERED that plaintiff and defendant are to confer, by telephone, on or before July 7, 2023 to determine mutually agreeable dates and times for: (i) plaintiff's examination before trial; (ii) plaintiff's independent medical examination; and (iii) defendant's examination before trial; and it is further

ORDERED that counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, upon plaintiff as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days of the date of this decision and order; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E filing" page on this court's website at the address www.nycourts.gov/suptmanh).

ORDERED that parties are directed to appear for a status conference in Part 5, located at 80 Centre Street, in room 320, on October 31, 2023 at 11:30 a.m.

This constitutes the decision and order of the Court.



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6/23/2023

DATE

HON. JUDY H. KIM, 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