

Lardiere v Site 6 DSA Owner LLC

2023 NY Slip Op 32471(U)

July 20, 2023

Supreme Court, New York County

Docket Number: Index No. 153260/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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ROSARIO LARDIERE,

Plaintiff,

INDEX NO. 153260/2018

MOTION DATE 07/19/2023

MOTION SEQ. NO. 004

- v -

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL
LLC, TACONIC INVESTMENT PARTNERS, L&M
DEVELOPMENT PARTNERS, BFC PARTNERS, L.P,
DELANCEY STREET ASSOCIATES LLC, NYU LANGONE
HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION
GROUP, LLC, BFC PHASE 1 DSA LLC, THE PACE
COMPANIES NEW YORK, INC., PEEPELS MECHANICAL
CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

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SITE 6 DSA OWNER LLC, TACONIC INVESTMENT
PARTNERS, L&M DEVELOPMENT PARTNERS, DELANCEY
STREET ASSOCIATES LLC, NYU LANGONE HEALTH
SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP,
LLC

Third-Party
Index No. 595818/2018

Plaintiff,

-against-

GIL-BAR INDUSTRIES, THE PACE COMPANIES NEW YORK
INC., PEEPELS MECHANICAL CORP

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Second Third-Party
Index No. 595217/2020

Plaintiff,

-against-

SITE SAFETY, LLC, MECHANICAL PIPING SOLUTIONS

Defendant.

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SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Third Third-Party
Index No. 596072/2021

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP., JACOBSON &
COMPANY INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 489, 490, 491

were read on this motion to/for DISCOVERY.

Defendants SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC, TACONIC INVESTMENT PARTNERS, LLC, s/h/a TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT PARTNERS, INC., s/h/a L&M DEVELOPMENT PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU LANGONE HEALTH SYSTEM, HUNTER ROBERTS CONSTRUCTION GROUP, s/h/a HUNTER ROBERTS CONSTRUCTION GROUP, LLC, and BFC PHASE I DSA, LLC (collectively, “Movants”)’s motion for an order directing plaintiff to provide additional responses about his expert disclosures and to compel the release of certain authorizations is granted in part and denied in part.

Background

Plaintiff brings this Labor Law case arising out of injuries he claims he suffered when he was allegedly hit in the head by a large pipe. He insists he suffered a traumatic brain injury.

In this motion, Movants seek additional expert disclosure statements from plaintiff. Specifically, they seek more information from plaintiff’s rehabilitation counselor/life care

planner and from plaintiff's economists. Movants want information about plaintiff's ability to earn money through other forms of employment, the impact on present and future earnings as well as details about how the losses were calculated.

With respect to the economists, Movants demand "every specific statistical data table relied upon, for every element of alleged loss." They seek other information as well and argue that plaintiff is not entitled to compensation to reflect the value of services provided by his siblings.

Movants also seek two additional authorizations. One is from an entity called Allsup, which allegedly provided services relating to plaintiff's efforts to obtain Social Security Disability Income. They insist that Allsup might have medical or vocational records previously undisclosed to defendants. The second request for an authorization is from Mount Sinai Beth Israel Hospital and they claim that these records have details about plaintiff's alleged drug use.

In opposition, plaintiff insists that his responses to the expert disclosure requests were sufficient. He insists that the CPLR only requires disclosure with reasonable detail and he has satisfied that obligation. Plaintiff observes that Movants were provided with all documentation that his experts relied upon when reviewing this matter.

Plaintiff insists that Movants are not entitled to any records from Allsup because the attorney client privilege applies and he emphasizes that Movants have already received an authorization for the release of all of plaintiff's Social Security Administration records. Plaintiff insists that the records about Mount Sinai relate to a May 31, 2016 emergency room visit, two years prior to the accident, in which he complained about ailments that have nothing to do with the injuries suffered in the subject accident. Plaintiff argues that Movants are on a fishing

expedition because the records Movants have relating to this visit reference plaintiff's use of MDMA although it states that plaintiff did not engage in chronic drug use.

In reply, Movants complain that plaintiff's expert responses do not set forth how the experts made their calculations or how the amounts were converted to present value. They insist that plaintiff has not properly demonstrated how the attorney client privilege applies to the Allsup authorization demand and that the Mount-Sinai records might contain information about "mind-altering drugs" which is relevant to a traumatic brain injury.

Discussion

"CPLR 3101(d)(1)(i) requires each party to identify each person whom the party expects to call as an expert witness at trial and [to] disclose in reasonable detail the subject matter on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. . . . Trial courts possess broad discretion in their supervision of expert disclosure under CPLR 3101(d)(1)" (*Rivera v Montefiore Med. Ctr.*, 28 NY3d 999, 1001-02, 41 NYS3d 454 [2016] [internal quotations and citation omitted]).

The Court denies the branch of the motion that demands plaintiff disclose more information about his experts' conclusions. The Court finds that plaintiff's responses (NYSCEF Doc. Nos. 466 and 467) satisfy his obligation under CPLR 3101 to disclose the subject matter about which each of his experts expects to testify. Plaintiff clearly did more than provide "a summary of the grounds" for each of the experts' opinions and included details about the basis for the experts' various conclusions. That Movants want more information is understandable, but the statute does not contemplate that that they are entitled to every possible detail.

The Court grants the motion for the two authorizations. With respect to Allsup, plaintiff did not meet his burden to explain how the attorney-client privilege applies. "The person who

asserts the privilege has the burden of proving [it]” (*In re Nassau County Grand Jury Subpoena Duces Tecum Dated June 24, 2003*, 4 NY3d 665, 678, 797 NYS2d 790 [2005]). Plaintiff’s opposition does not make clear how this privilege should prevent the requested authorization; he does not, for instance, identify the attorneys involved or possible communications that would implicate the privilege. Simply offering a conclusory assertion that the attorney client privilege applies is not sufficient where, as here, Movants seek records from a disability benefits advocacy group, which allegedly helped him apply for benefits. That type of organization does not obviously imply that the attorney client privilege bars disclosure of the requested records.

The Court also grants the motion with respect to the Mount Sinai authorization. Movants already obtained a record from this visit (NYSCEF Doc. No. 478) which suggests that plaintiff went to the emergency room complaining about dizziness after arriving late at night from a trip to Spain. The record notes that plaintiff admitted to “small MDMA use” but that there was “no chronic drug use” (*id.*). The Court recognizes that plaintiff complains that a single emergency room visit two years prior to the accident is irrelevant, but the fact is that plaintiff seeks damages for loss of enjoyment of life as well as for anxiety and mental anguish. Movants are therefore entitled to explore these records. The Court makes no finding about whether these records are admissible at trial.

“A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’—i.e., relevant—” (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d 157 [2018]). The records sought here are reasonably calculated to potentially yield information about plaintiff’s requested damages. Of course, these records might also support plaintiff’s argument that Movants are being deliberately hyperbolic in characterizing plaintiff as some sort of drug user. After all, the record from Mount

Sinai mentions a single instance of drug use while on vacation two years before the subject accident.

Accordingly, it is hereby

ORDERED that Movants' motion is granted only to the extent that plaintiff must provide the requested authorizations for Allsup and for Mount Sinai described above on or before August 9, 2023 and denied with respect to the remaining contentions.

See NYSCEF Doc. No. 493 about the upcoming conference.

7/20/2023

DATE



ARLENE P. BLUTH, 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