

**Velez v Seneca County Sheriff Dept.**

2023 NY Slip Op 33565(U)

October 12, 2023

Supreme Court, Wayne County

Docket Number: Index No. 89578

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court  
held in and for the County of  
Wayne at the Hall of Justice in the  
Town of Lyons, New York on the  
6<sup>th</sup> day of September, 2023

PRESENT: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

CASSANDRA VELEZ,

Plaintiff

DECISION  
Index No. 89578

-vs-

SENECA COUNTY SHERIFF DEPARTMENT,  
SENECA COUNTY SHERIFF, W. TIMOTHY LUCE,  
SENECA COUNTY AND EDWARD H. SWART,

Defendants

The Defendants have filed this motion seeking various forms of alternative relief:

1. Dismissing the Complaint without prejudice on the grounds that Plaintiff has failed to comply with General Municipal Law §50-h;
2. Dismissing the Complaint for willfully failing to disclose information that “ought to have been disclosed” pursuant to CPLR §3216 (3);
3. Compel the Plaintiff to complete the 50-h examination, which she failed to do under the direction of her counsel;
4. Compel counsel to pay for the cost of this motion and additional costs of re-examining the witness.

The very thorough 50-h hearing had been progressing without a single objection having been voiced until the following question had been asked:

What is it that you are alleging that the County of Seneca did wrong to cause your injuries?

Not only did Plaintiff's counsel object to the question, he instructed his client not to answer it. At this point professional courtesies disappeared. There was a contentious discussion about instructing the client not to answer the question. Plaintiff's counsel indicated the question was a question pertaining to the law and thus was an improper question requiring no answer.

Defense counsel countered expressing the view that the question was appropriate and that Plaintiff's counsel was free to object but it was inappropriate to direct his client not to answer the question.

Defense counsel indicated he was going to take a short break. Plaintiff's counsel inquired how long? Defense counsel responded six minutes. Plaintiff's counsel countered, how about two? Defense counsel replied, how about six? Then Plaintiff's counsel indicated that the hearing was over. Defense counsel countered by indicating that a premature ending of the 50-h hearing would effectively prevent the Plaintiff from filing suit in this case successfully. Then Plaintiff's counsel inquired about the reason for the break. Defense counsel expressed a desire to review his notes to see if he had any further questions to ask. Plaintiff's counsel questioned whether he needed more than two minutes to do that. Defense counsel replied that he did. Then Plaintiff's counsel reversed himself and indicated that the defense counsel could take all the time he needed to review his notes. Defense counsel concluded the hearing by indicating he had no further questions.

Plaintiff filed the Summons and Complaint on May 11, 2023.

This motion was filed on June 8, 2023. On June 9, 2023 Plaintiff's counsel emailed a note to defense counsel expressing bewilderment as to why the motion was filed. He volunteered to set up a continuation of the 50-h hearing, if desired.

On June 13, 2023, defense counsel sent a responsive email indicating he would get in touch with the carrier to see what the carrier wanted to do.

On July 19, 2023, defense counsel indicated he had been in contact with the carrier and that they desired to resume the 50-h hearing to finish asking questions that the client had been directed not to answer. In addition, it was required that Plaintiff's counsel or his firm pay for the cost of this motion and the costs associated with the continuation of the 50-h hearing.

In response to this transmission, counsel spoke but were unable to resolve their differences.

#### ANALYSIS

The 50-h hearing allows the municipal defendant “an opportunity to early investigate the circumstances surrounding the accident and to explore the merits of the claim, while information is readily available, with a view towards settlement.” (Alouette Fashions v Consolidated Edison Company, 119 A.D. 2d 481 [1<sup>st</sup> Dep't 1986] aff'd 69 N.Y. 2d 787 [1987]). The question which elicited this motion was construed by Plaintiff's counsel as a question of law and thus inappropriate. Defense counsel's view, to the contrary, is that he was eliciting facts. In reviewing the submissions, it is noted that the Verified Notice of Claim set forth the basis of negligence as to the County of Seneca at paragraph 3:

Upon information and belief, the Seneca County Sheriff's Department, Seneca County Sheriff, W. Timothy Luce, Seneca County and Edward H. Swart, their agents, servants and/or employees, negligently operated the vehicle involved in the October 4, 2022 accident referenced above. By virtue of the negligence of the employees, agents or servants of Seneca County Sheriff's Department, Seneca County Sheriff, W. Timothy Luce, Seneca County and Edward H. Swart, the claimant has sustained the above injuries.

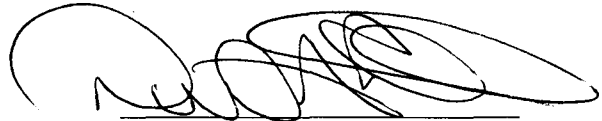
As mentioned earlier, the defense counsel conducted a very thorough examination of the Plaintiff.

A review of the submissions also reveals that the parties stipulated to the following:

It is hereby stipulated, by and between the attorneys for the respective parties hereto, that: All rights provided by the CPLR and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any questions, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to trial of this action.

It is the Court's Decision that the Defendants will be allowed a continuation of the 50-h hearing if they so choose. If the question which precipitated this application is asked, Plaintiff's counsel may object but must allow his client to answer the question. Defense counsel must request the continuation of the 50-h hearing by November 8, 2023. Failure to do so by that time will constitute waiver of the right for a further 50-h hearing. The cost of the reporter will be allocated as in the initial 50-h hearing. All other forms of relief requested in this application are denied.

Dated: October 12, 2023  
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett  
Acting Supreme Court Justice