

London v Mount Sinai Hosp.

2023 NY Slip Op 34100(U)

November 15, 2023

Supreme Court, New York County

Docket Number: Index No. 805333/2021

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

-----X

AMY MYERS LONDON, as Executor of the Estate of Ronald London, and AMY MYERS LONDON, individually,

Plaintiff,

INDEX NO. 805333/2021

MOTION DATE 09/21/2023

MOTION SEQ. NO. 003

- v -

THE MOUNT SINAI HOSPITAL and MOUNT SINAI HOSPITALS GROUP, INC.,

Defendants.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 146, 147, 148, 149

were read on this motion to/for EXTEND – TIME/RECONSIDER ORDER.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and wrongful death, the defendants move, in effect, pursuant to CPLR 2221(a) for a “clarification” of the directives set forth in this court’s July 24, 2023 order, so as to limit the scope of the disclosure required by that order, and, upon “clarification,” for an extension of time within which to comply with that order and thereafter to move for summary judgment. The plaintiff opposes the motion. The motion is granted only to the extent that the court “clarifies” its prior order by directing the defendant to provide all of the “hand-off” notes, documentation, metadata, audit logs, and audit trails described in that order, without limitation as to date or any other potential limiting factor, and extending their time to provide those items of discovery until December 27, 2023, and the motion is otherwise denied.

In its July 24, 2023 order, the court granted, in part, the plaintiff’s motion to compel the defendants to produce numerous items of discovery, and directed the defendants to produce them no later than August 23, 2023. Specifically, the court directed the defendants to

“(a) conduct and complete a further, diligent search for relevant ‘hand-off’ notes, and either produce the hand-off notes by that date if they exist and are locatable, or, if they cannot be located, provide a proper *Jackson* affidavit that describes what their search entailed, what paper or electronic records were searched, how those paper or electronic records were accessed and searched, who conducted the search, how long the search took to undertake, and the results thereof, which search shall include a search of all paper and electronic records and charts, and shall not be limited only to such hand-off documentation that was ‘in alignment with clinicians’ workflows,’ (b) produce the complete EPIC electronic chart referable to the hospitalization of the plaintiff’s decedent, and (c) produce audit trails, audit logs, and metadata of the EPIC electronic records referable to the hospitalization of the plaintiff’s decedent.”

Rather than complying with the directive, the defendants made the instant motion on August 17, 2023, only several days before their deadline for production, in an attempt to limit or restrict the extent of the required production. They thereafter produced only a limited number of responsive documents.

The directive set forth in this court’s July 24, 2023 order was neither ambiguous nor unclear. It set forth no limitations on the time frame of the documents that were required to be produced, and did not condition the production of those documents on an in camera inspection, inasmuch as there was nothing in those records that might be subject to a privilege against, or other bar to, disclosure. To the extent that the instant motion seeks leave to reargue the prior motion, reargument must be denied, inasmuch as the court did not overlook or misapprehend any facts or relevant law that were presented to it in connection with the prior application (see CPLR 2221[d][2]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]; see also *Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 4492 [1st Dept 2016]), as the defendants have neither persuasively argued nor presented evidence that would warrant a limitation on the scope of disclosure directed by the court. Hence, to the extent that the court’s prior order requires “clarification,” the court now make abundantly clear that the defendants must produce *all* hand-off notes and forms, documents, audit logs, audit trails, and metadata referable to the plaintiff’s decedent, as described in the July 24, 2023 order, without limitation as to date or as to any other potentially limiting factor.

The court notes that, where a discovery order is unambiguous, a party may not unilaterally limit its response to suit its own convenience or desire to avoid production (see *Unger v A.W. Chesterton Co.*, 2022 NY Slip Op 31494[U], *12, 2022 NY Misc LEXIS 2380, *15-16 [Sup Ct, N.Y. County, May 9, 2022 [Silvera, J.]). Inasmuch as the defendants did, in fact, seek court intervention in connection with their desire to limit their response prior to their deadline for production, rather than unilaterally withholding the documentation, the court concludes that an imposition of a sanction is unwarranted. Nonetheless, should the defendants fail to produce the entirety of the relevant documentation by the deadline set forth in this order, the court will entertain a motion for the imposition of sanctions.

In its November 15, 2023 order resolving Motion Sequence 002, the court denied the defendants' application for leave to file a late summary judgment motion. Hence, the same request included in the instant motion has been rendered academic.

The court denies all other requests for relief, whether set forth in the defendants' motion or in the plaintiff's opposition papers.


In light of the foregoing, it is,

ORDERED that the defendants' motion is granted to the extent that their request for "clarification" is granted, and the court clarifies that the defendants are directed to provide all of the "hand-off" notes and forms, documentation, metadata, audit logs, and audit trails described in this court's July 24, 2023 resolving Motion Sequence 001, without limitation as to date or any other potential limiting factor, the defendants' time to produce those items of discovery is extended until December 27, 2023, and the motion is otherwise denied; and it is further,

ORDERED that the parties shall appear for an initial pretrial settlement conference before the court, in Room 304 of 71 Thomas Street, New York, New York 10013, on January 16, 2024, at 2:00 p.m., at which time they shall be prepared to discuss resolution of the action and the scheduling of a firm date for the commencement of jury selection.

This constitutes the Decision and Order of the court.

11/15/2023
DATE


JOHN J. KELLEY, 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