

Hudgins v Spielfogel

2023 NY Slip Op 34338(U)

November 30, 2023

Supreme Court, New York County

Docket Number: Index No. 805087/2021

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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CONSTANCE HUDGINS,

Plaintiff,

- v -

WILLIAM SPIELFOGEL, DPM, MATHEW YAGUDAYEV,
DPM, and HAMILTON FOOT AND ANKLE ASSOCIATES,

Defendants.

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INDEX NO. 805087/2021

MOTION DATE 08/08/2023,
08/08/2023

MOTION SEQ. NO. 004, 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for STRIKE PLEADINGS.

In this action to recover damages for podiatric malpractice, the defendants William Spielfogel, DPM, and Hamilton Foot and Ankle Associates (the Hamilton defendants) move pursuant to CPLR 3124 to compel the plaintiff to provide them with medical authorizations and a bill of particulars or, in the alternative, pursuant to CPLR 3042(c), 3042(d), and 3126 either to dismiss the complaint or to preclude the plaintiff from adducing evidence at trial in support of her claims against them (MOT SEQ 004). The defendant Mathew Yagudayev, DPM, separately moves for the same relief as to him (MOT SEQ 005). The plaintiff did not oppose the motion. The motion is granted to the extent that the plaintiff is conditionally precluded from adducing evidence in support of her claims at trial unless, on or before January 16, 2024, she shall provide the defendants with all relevant medical authorizations and serve bills of particulars as to all of the defendants in accordance with this court’s March 15, 2023 status conference order.

This conditional order will become absolute upon the plaintiff's failure to provide such responses by that date. The motion is otherwise denied.

In an order dated August 23, 2022, this court granted the motion of the plaintiff's attorney for leave to withdraw as her counsel (MOT SEQ 003), and directed the plaintiff to appear for a preliminary conference on October 4, 2022. In two orders, both dated October 4, 2022 (MOT SEQ 001 and 002), the court respectively denied Yagudayev's and the Hamilton defendants' separate motions to compel discovery or impose discovery sanctions upon the plaintiff, concluding that the only relief permitted in connection with a discovery motion made prior to a preliminary conference was to schedule and conduct a preliminary conference (see 22 NYCRR 202.8[f]). The parties appeared for a preliminary conference on October 4, 2022, after which the court issued a preliminary conference order on that date which, among other things, set a deadline for the plaintiff's service of bills of particulars responsive to the defendants' demands therefor, and for her service of authorizations permitting the defendants to obtain her medical records. As of January 24, 2023, the plaintiff had yet to serve those items, despite the lapse of the deadlines set forth in the October 4, 2022 preliminary conference order. On January 24, 2023, the court conducted a compliance conference, and issued a compliance conference order extending the plaintiff's deadlines. The plaintiff failed to comply with those deadlines as well.

On March 15, 2023, the court conducted a status conference, and issued a status conference order, further extending the plaintiff's deadlines for service of bills of particulars and authorizations, and scheduling a follow-up status conference for May 10, 2023. In the March 15, 2023 status conference order, the court directed that "on or before April 26, 2023, plaintiff shall provide properly executed authorizations for the providers listed in the defendants' demands, and a bill of particulars as to each defendant. Plaintiff's failure to comply with this order will result in a conditional order of preclusion upon a motion by defendants." The court directed the defendants to mail a copy of that status conference to the plaintiff at her home address, a directive with which they complied.

The plaintiff failed to provide the authorizations or serve bills of particulars by April 26, 2023. At the following status conference, which was adjourned from May 10, 2023 until May 11, 2023, the plaintiff appeared and stated that she still had not complied with the directives in any of the prior discovery orders. The instant motions ensued.

“If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Kihl v Pfeffer*, 94 NY2d 118, 123 [1999]). CPLR 3126 authorizes the court to sanction a party who “refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed” (*Kutner v Feiden, Dweck & Sladkus*, 223 AD2d 488, 489 [1st Dept 1998] [emphasis added]). A party’s failure to satisfy his or her discovery obligations, particularly after a series of court orders has been issued, “may constitute the dilatory and obstructive, and thus contumacious, conduct” (*id.* at 489; see *CDR Creances S.A. v Cohen*, 104 AD3d 17 [1st Dept 2012]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004]) warranting the imposition of a sanction.

In accordance with the March 15, 2023 status conference order, the defendants’ motions are thus granted to the extent of conditionally precluding the plaintiff from adducing evidence of her claims against them at trial, unless, on or before January 16, 2024, the plaintiff provides the defendants with the authorizations that they had demanded and a proper response to their demands for bills of particulars. This conditional order shall become absolute upon the plaintiffs’ failure to comply with its provisions (see *Trabanco v City of New York*, 81 AD3d 490 492 [1st Dept 2011]; *Rampersad v New York City Dept. of Educ.*, 30 AD3d 218, 219 [1st Dept 2006]).

In light of the foregoing, it is,

ORDERED that the motion of the defendants William Spielfogel, DPM, and Hamilton Foot and Ankle Associates is granted to the extent that the plaintiff is conditionally precluded from adducing evidence in support of her claims against them at trial unless, on or before January 16, 2024, she shall provide them with the authorizations that they had demanded and a

proper response to their demand for a bill of particulars, and their motion is otherwise denied; and it is further,

ORDERED that the motion of the defendant Mathew Yagudayev, DPM, is granted to the extent that the plaintiff is conditionally precluded from adducing evidence in support of her claims against him at trial unless, on or before January 16, 2024, she shall provide him with the authorizations that he had demanded and a proper response to his demand for a bill of particulars, and his motion is otherwise denied; and it is further,

ORDERED that this conditional order shall become absolute upon the defendants' submission of proof that the plaintiff failed timely to comply with any of the provisions hereof; and it is further,

ORDERED that, on or before December 11, 2023, the defendants shall mail a copy of this order, with notice of entry, to the plaintiff at 8 West 118th Street, Apt. 15F, New York, NY 10026.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

<u>11/30/2023</u>					
DATE					
MOTION 004:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>			<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
MOTION 005:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OTHER
	<input type="checkbox"/>	SETTLE ORDER	DENIED	<input type="checkbox"/>	REFERENCE
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	NON-FINAL DISPOSITION
CHECK IF APPROPRIATE:	<input type="checkbox"/>			<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>			<input type="checkbox"/>	OTHER
	<input type="checkbox"/>			<input type="checkbox"/>	REFERENCE