

Morales v Ben Hur Transp. Corp.
2023 NY Slip Op 35186(U)
March 16, 2023
Supreme Court, Bronx County
Docket Number: Index No. 20623/2020E
Judge: Veronica G. Hummel
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**

RAMONA MORALES,

Plaintiff,

-against-

BEN HUR TRANSPORTATION CORP. and
JONATHAN MANZUETA,

Defendants.

Index No. 20623/2020E**HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 2**

In accordance with CPLR § 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and opposition to defendants' motion (Seq. No. 2) seeking an order, pursuant to CPLR § 3124 and CPLR § 3126, directing the plaintiff to comply with defendants' Post-Deposition Demand for Authorizations and Post-Deposition Notice for Discovery and Inspection dated September 1, 2022 by a date certain, with the failure to comply resulting in a self-executing order of preclusion.

This is an action for alleged serious personal injuries resulting from a motor vehicle accident which occurred on April 6, 2019. Following Plaintiff's examination before trial ("EBT"), defendants served a Post-EBT Notice for Discovery and Inspection on September 1, 2022, setting out five requests for contact information of people referenced by Plaintiff during said EBT. The first individual, "Israel" (last name unknown), was stated by Plaintiff to be a witness to the accident. The fifth individual, an unnamed woman, is also an alleged witness to the accident. The other three individuals – Lila Mohammed, Gregory Guzman, and Yolanda (last name unknown) – were mentioned by Plaintiff in connection to her injuries. Specifically, Ms. Mohammed and Mr. Guzman were said to be "at the hospital" with Plaintiff following the accident, and Yolanda is "a friend [...]" who referred her to one of her doctors that she treated with in connection with this accident."

Plaintiff's counsel did not serve a formal response to the demands but replied with a letter broadly objecting to the requests as overbroad, vague, and beyond the scope of disclosure.

Defendants also served a Post-EBT Demand for Authorizations on September 1, 2022, for various doctors and facilities connected to Plaintiff's medical treatment. To date, Plaintiff has not responded to the demand for authorizations.

On a motion to compel the production of discovery pursuant to CPLR § 3124, the movant bears the burden of establishing a basis for the production of the discovery sought (*see Troshin v Stella Orion Home Care Agency, Inc.*, 2018 NY Slip Op 30922[U] [Sup Ct. N.Y. County 2018]). Movant must demonstrate that the “discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims,” *SNI/SI Networks LLC v. DIRECTV, LLC*, 132 A.D.3d 616 (1st Dep’t 2015), citing *Abrams v. Pecile*, 83 A.D.3d 527, 528 (1st Dep’t 2011). See also *Forman v. Henkin*, 30 N.Y.3d 656 (2018): “The request need only be appropriately tailored and reasonably calculated to yield relevant information.” The opposing party bears the burden of establishing the materials are immune or exempt from discovery (*see Ambac Assurance Corp. v DIJ Mortg. Capital, Inc.*, 92 AD3d 451 [1st Dept. 2012]).

CPLR § 3101(a) directs that there shall be “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has stated that the words “material and necessary” are to be interpreted to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). However, a court has discretion to limit disclosure and issue a protective order on its own initiative or upon motion “to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts” (CPLR § 3103(a)).

Regarding the Post-EBT Demand for Authorizations, Defendants have demonstrated that such disclosure is material and relevant to Plaintiff’s claim for damages, and Plaintiff has raised no objections to those demands. During a virtual conference with the Court held on March 16, 2023, Plaintiff agreed to serve a formal response to said demand and the relevant authorizations for medical providers within 30 days of this order.

Turning to the Post-EBT Notice for Discovery and Inspection, Defendants have not satisfied their burden to provide a sufficient basis for all the individuals named therein. Specifically, the Court is unconvinced following the March 16, 2023 conference that the other non-parties named as “witnesses to damages” are reasonably calculated to yield relevant information. Plaintiff’s two hospital visitors – her niece and son – seemingly have no medical background and would not be able to provide any insight or confirmation as to her injuries or treatment that Defendants could not obtain, more accurately, from hospital records. Likewise, it is overbroad at this time to consider Plaintiff’s friend an authority on her damages claim based on a

passing mention in the EBT that said friend referred her to a particular female doctor, who in turn referred her for EEG testing. Assuming Plaintiff can obtain the name and authorize the release of records from that doctor herself, something Defendants separately requested in their Post-EBT Demand for Authorizations, access to the referring friend is unreasonable and unnecessary.

Finally, the demands in the first and fifth paragraph of the Post-EBT Notice for Discovery and Inspection are material and necessary to the defense of the action. Plaintiff should fully disclose any available contact information for the two witnesses to the accident mentioned in Plaintiff's EBT, one of whom Plaintiff testified sent her photographs of the accident.

The Court notes that in serving formal responses to discovery demands, boilerplate objections — such as “overbroad, vague, and burdensome” without more — are insufficient, pursuant to CPLR § 3122(a) (objections must be made with “reasonable particularity.”) Plaintiff's responses pursuant to this Order *must* address each of Defendants' demands, and if necessary, set forth a reasonably detailed explanation for *why* a demand is overbroad, vague, or burdensome. If Plaintiff cannot offer a particularized explanation for any objection, then they should not make that objection. Further, if Plaintiff claims not to be in possession of any information or documents responsive to a demand to which they do not have a sufficiently particularized objection, they must at minimum produce an affidavit describing, in reasonable detail, the steps taken to search for any documents responsive to that demand or otherwise explaining why such information would or could not be in Plaintiff's possession. *Jackson v. City of New York*, 185 A.D.2d 768, 770 (1st Dep't 1992).

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

Defendants' motion is **granted in part**, to the extent that it is hereby:

ORDERED that Plaintiff shall, **on or before April 17, 2023**, serve a formal response to Defendants' Post-EBT Demand for Authorizations dated September 1, 2022, in accordance with the prescriptions set forth in this Order, and produce responsive documents; and it is further

ORDERED that Plaintiff shall, **on or before April 17, 2023**, serve a formal response to Defendants' Post-EBT Notice for Discovery and Inspection dated September 1, 2022, with the exception that #2, #3, and #4 are deemed stricken by the Court; and it is further

in accordance with the prescriptions set forth in this Order, and produce responsive documents; and it is further

ORDERED that the Clerk shall mark the motion (Seq No. 2) decided in all court records.

This constitutes the decision and order of the Court.

Dated: March 16, 2023

Hon.


VERONICA G. HUMMEL, A.J.S.C.

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1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
- ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
- ☐ ISSUE A PRELIMINARY CONFERENCE/CASE SCHEDULING ORDER
- ☐ CONVERT TO ELECTRONIC FILING ☐ EDIT CAPTION