

<b>De Jesus v Tasoulis</b>
2024 NY Slip Op 35176(U)
September 9, 2024
Supreme Court, Bronx County
Docket Number: Index No. 801452/2023E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 20

-----X  
LUZ DE JESUS,

Index No. 801452/2023E

Plaintiff,

-against-

Decision and Order  
Motion #1

DIMITRIOS TASOULIS and  
STACY TASOULIS,

Defendants.

-----X  
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all the papers filed by the parties in NYSCEF in connection with defendants' motion (Motion #2), made pursuant to 22 NYCRR § 202.21 (e) and CPLR 3214 seeking an order 1) vacating plaintiff's note of issue and certificate of readiness; 2) (a) compelling plaintiff to provide HIPAA-compliant authorizations for records of treatments related to plaintiff's alleged injuries; (b) Social Security Disability records/authorizations; (c) witness information; and (d) photographs/video taken on the day of the incident; 3) withdrawal of anxiety/mental anguish claim<sup>1</sup>; and 4) extending defendants' time to move for summary judgment to 120 days after the completion of discovery.

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<sup>1</sup> Defendants failed to address their contention that plaintiff should withdraw plaintiff's claim for mental anguish in their moving papers. That notwithstanding, plaintiff has withdrawn plaintiff's claim for mental anguish. As such, the branch of defendants' motion seeking to compel plaintiff to withdraw plaintiff's claim for mental anguish is denied as moot.

### **Defendants' Motion to Vacate the Note of Issue**

Within 20 days after service of a note of issue, any party to the action may move to vacate the note of issue (22 NYCRR § 202.21 [e]). “Where a party moves to vacate a note of issue, the only showing necessary on the motion is that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of ... section [202.21] in some material respect” (*Sky Coverage Inc. v Alwex Inc.*, 202 AD3d 454, 454 [1st Dept 2022] [internal quotation marks omitted]; 22 NYCRR 202.21 [e]).

The parties appeared for a Court conference on August 27, 2024. Based upon the representations of counsel, the Court finds that the certificate of compliance erroneously indicated that discovery was complete and that this matter was ready for trial (*Sky Coverage Inc.*, 202 AD3d at 454). The Court grants the branch of the motion that seeks to vacate the Note of Issue. The branch of defendants' motion for an extension of time to move for summary judgment is denied as moot.

### **Defendants' Motion to Compel**

“Disclosure in civil actions is generally governed by CPLR 3101 (a), which directs: ‘[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.’” (*see Forman v Henkin*, 30 NY3d 656, 661 [2018] quoting CPLR 3101 [a]). The term “material and necessary” is interpreted liberally to require disclosure upon request any facts which will assist preparation for trial (*id.*). “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—regardless of whether discovery is sought from another party” (*id.*).

Defendants seek to compel disclosure of various photographs, HIPAA-compliant authorizations for the release of records (medical, pharmacy, ambulance, and disability), and video/photographic evidence. Plaintiff has provided all the materials sought save for 1) authorizations to obtain records from: a) plaintiff's primary care physician; b) Dr.

Diaz; c) eye-care providers; and d) prior accident records; 2) witness Vincent Malabe's telephone number or email address; and 3) witness Christina Diaz's telephone number or email address.

In this case, plaintiff has not alleged any injuries with respect to plaintiff's eyes, nor is there evidence that plaintiff's vision affected plaintiff's ability to see and perceive the purported defect. Since plaintiff has not placed plaintiff's eye related conditions in controversy, plaintiff has not waived the patient-physician privilege with respect to records of such conditions (*see Brito v Gomez*, 33 NY3d 1126, 1127 [2019]; *see also Gumbs v Flushing Town Center III, L.P.*, 114 AD3d 573, 573-574 [1st Dept 2014]). The branch of defendants' motion to compel plaintiff to provide HIPAA-compliant authorizations for plaintiff's eye-care providers is therefore denied.

Defendants, however, have demonstrated that the remaining outstanding items of discovery pertain to plaintiff's claimed injuries and/or necessary witnesses, and thus are relevant and necessary to the defense of this action (*see Forman*, 30 NY3d at 666). The Court grants defendants' motion to compel with respect to the remaining outstanding items enumerated above. Defendants' motion to compel is otherwise denied as moot.

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

*Accordingly, it is hereby*

**ORDERED** that the branch of defendants' motion (Motion #1) to vacate the note of issue is GRANTED; and it is further

**ORDERED** that the branch of defendants' motion to compel motion to compel disclosure of 1) authorizations to obtain records from a) plaintiff's primary care physician; b) Dr. Diaz; c) prior accident records; 2) witness Vincent Malabe's telephone number or email address; and 3) witness Christina Diaz's telephone number or email address is GRANTED; and it is further

**ORDERED** that plaintiff shall provide defendants with the discovery described in the preceding paragraph on or before October 24, 2024; and it is further

**ORDERED** that if plaintiff fails to abide by this Order, plaintiff shall be precluded from introducing evidence of plaintiff's claimed injuries at trial; and it is further

**ORDERED** that the branch of defendants' motion to compel is otherwise **DENIED**; and it is further

**ORDERED** that the branch of defendants' motion to compel plaintiff to withdraw plaintiff's claim for anxiety/mental anguish is **DENIED** as moot; and it is further

**ORDERED** that the branch of defendants' motion for an extension of time to move for summary judgment is **DENIED** as moot; and it is further

**ORDERED** that this order serves to supersede any previous court orders to the extent that, as set forth in the Rules of Part 20, the pendency of motions pursuant to CPLR 3211, 3212 and 3213 will not stay discovery, any motion for summary judgment in this case shall be made by the parties herein **no later than 60 days** after the filing of the note of issue, and a motion for summary judgment must include a statement of material facts and counterstatement of material facts; and it is further

**ORDERED** that the Clerk shall mark Motion #1 decided and the Note of Issue stricken in all Court records.

The foregoing constitutes the Decision and Order the Court.

Dated: Bronx, New York  
September 9, 2024

Hon. [s/Hon. Veronica G. Hummel/signed 09/09/2024](#)  
Hon. Veronica G. Hummel, A.S.C.J.

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1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION #1 IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT
- VACATE NOTE OF ISSUE  CANCEL FUTURE PT APPEARANCES