

Brown v City of New York
2024 NY Slip Op 35691(U)
October 10, 2024
Supreme Court, Bronx County
Docket Number: Index No. 300434/2017E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
NACIRRA BROWN, as Administrator of the Estate
of JAMEL BROWN,

Plaintiff,

-against-

THE CITY OF NEW YORK and NEW YORK
CITY HOUSING AUTHORITY,Defendants.
-----X

GUZMAN, J.

DECISION & ORDER

Index No.: 300434/2017E

Motion Sequence No. 2

Jamel Brown commenced this action to recover damages for personal injuries he allegedly sustained on December 2, 2015, at 1373 Washington Avenue, Bronx, New York. At a 50-h hearing, Plaintiff testified that he went to the building, owned/managed by the New York City Housing Authority ("NYCHA") to visit friends. As he was stepping out of the elevator on the fifth floor, the elevator suddenly moved upward. Plaintiff testified that his foot became lodged in the door as the elevator moved, causing injuries to his left leg. He remained hospitalized for over two weeks and underwent three separate surgeries.

Brown testified that at that time of the accident, he resided at a residential program to treat substance use and mental health disorders; he took medication for schizoaffective disorder and mood disorder; he used crack cocaine multiple times daily; he had no permanent address, but sometimes stayed with a sister; he frequented a soup kitchen for meals; and he had only a sporadic work history. He also admitted that on the date of the accident, he had consumed alcohol and used crack cocaine. *See* NYSCEF Doc. 17.

By letter dated June 10, 2022, counsel for Jamel Brown notified the Court that his client had passed away on August 30, 2021. *See* NYSCEF Doc. 7. Letters of Administration were issued to Plaintiff on September 21, 2022.

On this motion, NYCHA moves to compel discovery from Plaintiff pursuant to CPLR § 3124 and § 3126. It also seeks a protective order pursuant to CPLR § 3103(a) sustaining NYCHA's objections to certain documents requested by Plaintiff's demand for discovery dated June 22, 2022.

With respect to its motion to compel, NYCHA states that on May 15, 2020, it served a demand for authorizations for medical providers who treated decedent from December 2, 2010, to the present. Specifically, NYCHA sought authorizations for Bronx Lebanon Hospital Center, St.

Barnabas Hospital, and Lincoln Hospital Center, where decedent received medical care prior to the accident, including treatment for psychiatric/psychological and drug use treatment. Plaintiff only provided some authorizations for decedent's medical records from the date of the accident to the present. NYCHA contends that it is entitled to conduct reasonable discovery of decedent's pre-incident medical condition in view of his claim for loss of enjoyment of life. NYCHA further contends that Mr. Brown waived the physician-patient privilege "by affirmatively putting Mr. Brown's physical and mental condition in issue." See NYSCEF Doc. 15 at ¶ 22.

CPLR § 3101(a) provides that "[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." In general, "[s]ince the nature and severity of the plaintiff's prior medical conditions may have an impact upon the amount of damages, if any, recoverable for a claim of loss of enjoyment of life, the records regarding those preexisting medical conditions are material and necessary to the defense." *Amoroso v. City of New York*, 66 A.D.3d 618, 618, 887 N.Y.S.2d 163, 164 (2d Dep't 2009). Nevertheless, where there is no claim to recover damages for psychological injury or aggravation of a preexisting emotional or mental condition, disclosure of psychiatric records is generally not warranted. See *Churchill v. Malek*, 84 A.D.3d 446, 446, 922 N.Y.S.2d 341 (1st Dep't 2011); see also *Alford v. City of New York*, 116 A.D.3d 483, 484, 983 N.Y.S.2d 522, 523 (1st Dep't 2014) (since plaintiff withdrew the claimed injuries relating to his mental condition, he cannot be compelled to disclose confidential records relating to prior treatment for substance or alcohol abuse or his mental condition).

Here, the complaint alleges that Jamel Brown suffered "pain, shock and mental anguish." The bill of particulars dated June 6, 2018, also alleges that his injuries "may result in, precipitate, aggravate and/or exacerbate future permanent and/or temporary physical, anatomical and/or mental impairments and disabilities." See NYSCEF Doc. 20 at ¶ 15. Nevertheless, Jamel Brown's testimony was limited to the physical effect of his injury. At the 50-h examination, he further testified as follows:

Q. What is the condition of your left leg, currently?

A. They did a good job at St. Barnabas. They did a very good job, and I could go up and down the stairs. I could move on it. I just can't run and jump.

Q. You told us you used a cane for a while. How long did you use that cane for?

A. A few weeks.

Q. When you walk, do you have any type of limp, or any problems walking?

A. A little bit. Like when I go down the stairs, I go down, not simultaneously. I got to go step-by-step.

Q. But as far as walking on a flat surface?

A. I could walk.

Q. You can walk?

A. Yes.

Q. Do you take any medication? Do you have any pain with the left foot now?

A. No.

Q. No pain, currently?

A. No.

Q. Are you able to move the ankle up and down, like you could before?

A. Not as much as this one, but I can move it (indicating).

Q. Are there any physical activities that you used to do, that you can't do anymore?

A. As far as, probably, just you know, running. Anything I got to do with jumping. Like play basketball, but I can't do it like I used to.

See NYSCEF Doc. 17 at 64-66. To the extent that the claim for “loss of enjoyment of life” relates solely to Jamal Brown’s physical injuries, the records sought by Defendant concerning his pre-accident substance abuse and mental health treatment information need not be disclosed, since the potential relevance has not been shown. Additionally, in opposition to this motion, Plaintiff states that she is withdrawing the claim for “loss of enjoyment of quality of life” or “loss of enjoyment of life” as a separate and distinct category of damages. See NYSCEF Doc. 33 at ¶ 56. Plaintiff further states that “[t]he only injuries for which damages are being sought are for those to [decedent’s] left leg.” *Id.* at ¶ 58; cf. *Greco v Wellington Leasing L.P.*, 144 A.D.3d 981, 982, 43 N.Y.S.3d 64, 66 (2d Dep’t 2016) (where plaintiff claimed impairment of her nervous system and requirement of neurological care, the nature and severity of her previous psychiatric conditions and her history of treatment for substance abuse are matters material and necessary to the issue of damages”).

Similarly, insofar as NYCHA contends that the requested medical records are relevant to the claim for diminished earning capacity, the Court notes that Plaintiff is not seeking such damages. See NYSCEF Doc. 33 at ¶ 58. NYCHA has not otherwise demonstrated that there is a causal link between decedent’s mental health and/or substance abuse and the cause of the accident. See *Gough v. Panorama Windows, Ltd.*, 133 A.D.3d 526, 19 N.Y.S.3d 169 (1st Dep’t 2015) (affirming denial of motion to compel production of records of plaintiff’s methadone use because “defendants failed to submit any evidence of a causal link between plaintiff’s methadone use and the motor vehicle accident at issue.”); *Budano v. Gurdon*, 97 A.D.3d 497, 948 N.Y.S.2d 612 (1st Dep’t 2012) (affirming denial of motion to compel production of mental health, drug, and alcohol records because defendant

had not “establish[ed] a connection between those conditions and the cause of the accident.”

Accordingly, NYCHA’s motion to compel authorizations for the requested medical records is denied.

As noted above, NYCHA also moves for a protective order pursuant to CPLR § 3103(a) sustaining NYCHA’s objections to Plaintiff’s June 10, 2022, Notice for Discovery and Inspection. The demand requests 23 separate categories of documents relating to elevator records for the subject building, including repair and maintenance records and documents relating to specific elevator violations, as well as documents pertaining to an investigation undertaken by the New York City Department of Investigation into a 2015 fatal elevator accident, also in a NYCHA building. *See* NYSCEF Doc. 27.

In support of its motion, NYCHA states that it has already produced elevator drawings, blueprints, work orders, inspection notices, shop logs, maintenance schedules, violation logs, standard procedure manual, and accident reports concerning decedent’s accident. *See* NYSCEF Doc. 28. Its argument is directed primarily to the production of documents concerning the 2015 fatal elevator accident. The Department of Investigation conducted a review of elevator safety in NYCHA buildings as a result of the fatal accident. Of note, Plaintiff submitted a FOIL request to the Department of Investigation concerning its investigation, which requested the same documents sought herein from NYCHA. *See* NYSCEF Doc. 39.

NYCHA has submitted a *Jackson* affidavit from an Executive Assistant in NYCHA’s Elevator Services and Repair Department indicating that there is no “list or record” of the documents or information which may have been requested by DOI or may have been provided to DOI in connection with its investigation into decedent’s accident. *See* NYSCEF Doc. 31. However, Plaintiff requests documents provided by NYCHA to the Department of Investigation related to the 2015 fatal accident.

Although the 2015 fatal elevator accident apparently occurred in a different building, Plaintiff has made a plausible argument that the documents sought may be relevant to the issue of notice in this case, or are otherwise reasonably calculated to yield relevant information, with the exception of Request No. 23, which is overly broad. NYCHA’s argument that the documents related to DOI’s investigation and report should be obtained from the Department of Investigation is rejected. Plaintiff’s independent efforts to obtain documents through a Freedom of Information Act request does not extinguish NYCHA’s discovery obligations. *Matter of Steam Pipe Explosion at 41st St. & Lexington Ave.*, 127 A.D.3d 554, 556, 8 N.Y.S.3d 88 (1st Dep’t 2015), *aff’d* 27 N.Y.3d 985, 31

N.Y.S.3d 455 (2016); *Z.D. v MP Mgt., LLC*, 150 A.D.3d 550, 552, 55 N.Y.S.3d 194 (1st Dept 2017).

Accordingly, it is hereby:

ORDERED AND ADJUDGED that the motion filed by Defendant to compel Plaintiff to provide authorizations for the requested medical records is denied; and it is further

ORDERED AND ADJUDGED that Defendant's motion for a protective order pursuant to CPLR § 3103(a) sustaining NYCHA's objections to certain documents requested by Plaintiff's demand for discovery dated June 22, 2022, is granted only with respect to Document Request No. 23, and is otherwise denied; and it is further

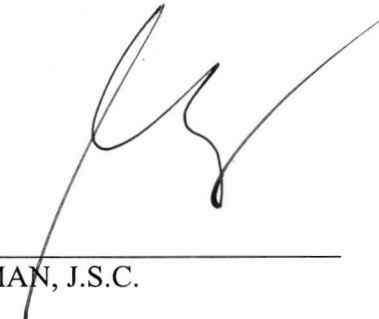
ORDERED AND ADJUDGED that Defendant shall produce the requested discovery within thirty days of the date of this Decision & Order; and it is further

ORDERED AND ADJUDGED that the parties shall appear for an in-person conference on October 24, 2024 at 2:00 p.m. to explore potential settlement of this matter; and it is further

ORDERED AND ADJUDGED that Defendant shall serve a copy of this Decision & Order with notice of entry within twenty days of entry.

This constitutes the Decision & Order of the Court.

Dated: Bronx, New York
October 10, 2024



WILMA GUZMAN, J.S.C.