

Gonzalez v City of New York

2025 NY Slip Op 30822(U)

March 12, 2025

Supreme Court, New York County

Docket Number: Index No. 155283/2020

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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MELISSA GONZALEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, YL 29 REALTY LLC, 29 JOHN STREET LLC, T-MOBILE USA, INC., CONSOLIDATED EDISON COMPANY OF NEW YORK INC., C.A.C. INDUSTRIES INC., 71 NASSAU STREET LLC, DOWNTOWN CELLULAR INC.,

Defendant.

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INDEX NO. 155283/2020

MOTION DATE 02/24/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 156, 157, 158, 159, 160, 161, 162, 163, 164

were read on this motion to/for DISCOVERY.

Defendants T-MOBILE USA, INC. and DOWNTOWN CELLULAR INC. (hereinafter “Moving Defendants”) move this court for an order: (a) compelling Plaintiff Melissa Gonzalez (“Plaintiff”) to comply with prior court orders dated October 19, 2021, August 8, 2022, October 31, 2022, February 7, 2024, October 6, 2024, and August 20, 2024; (b) compelling Plaintiff to provide outstanding discovery and authorizations; (c) compelling co-Defendants, THE CITY OF NEW YORK and C.A.C. INDUSTRIES INC., to provide outstanding discovery; and (d) granting such other and further relief as the court deems just and proper.

Plaintiff and Co-Defendants THE CITY OF NEW YORK and C.A.C. INDUSTRIES INC. oppose the motion, asserting, *inter alia*, that they have provided all necessary responses, that Moving Defendants failed to engage in sufficient good faith efforts to resolve the disputes, and that certain demands are either improper or premature.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from a personal injury allegedly sustained by Plaintiff in a slip-and-fall incident on January 2, 2020, at 29 John Street, New York, New York. Plaintiff commenced this action on July 13, 2020, and issue was joined by THE CITY OF NEW YORK on or about September 9, 2020, and by T-MOBILE USA, INC. on September 14, 2020.

A protracted discovery process has ensued, involving multiple court orders directing the exchange of discovery materials. Moving Defendants contend that Plaintiff and co-Defendants have failed to comply with these orders, specifically in relation to HIPAA-compliant authorizations, responses to discovery demands, and inspection of relevant records. Plaintiff and co-Defendants dispute these claims, asserting that discovery has been substantially completed and that any remaining issues should have been resolved through good faith efforts rather than motion practice.

ARGUMENTS

Moving Defendants argue that despite multiple court orders, Plaintiff has failed to provide HIPAA-compliant authorizations for various medical providers, including NYU Langone Hospital, HealthFirst, Downtown New York Presbyterian Hospital, Sports Medicine Bronx, and Bradley Wasserman, M.D. They also contend that Plaintiff has not provided access credentials for social media accounts that purportedly contain relevant posts regarding her injuries. Additionally, Moving Defendants assert that co-Defendants have failed to provide witness information, accident reports, and other necessary discovery materials, thereby prejudicing their ability to defend against Plaintiff's claims.

Plaintiff, in opposition, asserts that she has substantially complied with all outstanding discovery demands. She contends that her January 28, 2025, production addressed Moving Defendants' concerns and that any remaining issues are *de minimis*. Further, she argues that the demand for social media account credentials is overly broad and intrusive.

Co-Defendants THE CITY OF NEW YORK and C.A.C. INDUSTRIES INC. argue that they have provided all relevant materials, including thousands of pages of Department of Transportation records and scheduled an on-site inspection of Department of Design and Construction records for January 29, 2025. They contend that Moving Defendants failed to engage in good faith efforts to resolve any disputes prior to filing the instant motion and that the motion is premature given the ongoing discovery process.

DISCUSSION

Under CPLR § 3101(a), parties are entitled to “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The term “material and necessary” is to be interpreted broadly, but discovery demands must be reasonable and proportionate to the needs of the case (*Matter of Kapon v. Koch*, 23 NY3d 32, 38 [2014]; *Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). Courts retain broad discretion to supervise discovery and to fashion appropriate remedies for noncompliance (*Geffner v. Mercy Med. Ctr.*, 83 AD3d 998 [2d Dept 2011]).

With respect to Plaintiff's discovery obligations regarding HIPAA-compliant authorizations, the court recognizes that a divergence exists between the broader disclosures permitted by the Appellate Division, Second Department, and the more circumscribed approach endorsed by the Appellate Division, First Department (*see Rega v. Avon Prods, Inc.*, 49 AD3d 329 [1st Dept 2008]; *Caplow v. Otis El. Co.*, 176 AD2d 199 [1st Dept 1991]; *Diamond v. Ross*

Orthopedic Group, P.C., 41 AD3d 768 [2d Dept 2007]; *Weber v. Ryder TRS, Inc.*, 49 AD3d 865 [2d Dept 2008]). Notwithstanding this divergence, the court finds that Plaintiff has not substantially complied with the authorization requirements as set forth by the Appellate Division, First Department. In particular, Plaintiff's production of medical records covering only the period from January 2, 2020—the date of the incident—to the present is insufficient. Rather than mandating the disclosure of Plaintiff's entire medical record—which Moving Defendants have not established a sufficient basis for at this time—the court will limit the required scope to HIPAA-compliant authorizations covering the period from three years prior to the accident through to the present. Accordingly, Plaintiff is directed to cure the deficiencies in her HIPAA authorizations within thirty (30) days by producing records limited to the period specified above.¹

With respect to social media access, courts have required disclosure of social media content where it is likely to contain material relevant to a party's claims (*Forman v. Henkin*, 30 NY3d 656 [2018]). However, broad demands for usernames and passwords are generally disfavored. As such, Plaintiff shall provide any social media posts referencing her injury or recovery but need not disclose login credentials.

As to co-Defendants' obligations, the court finds that THE CITY OF NEW YORK and C.A.C. INDUSTRIES INC. have substantially complied with discovery demands, including the production of extensive documentation and the scheduling of an on-site inspection. Moving Defendants' failure to engage in good faith efforts to resolve any remaining disputes weighs against granting broad relief. However, THE CITY OF NEW YORK is directed to provide outstanding witness information and accident reports within thirty (30) days.

For the reasons set forth above, it is hereby

ORDERED that the motion is granted in part to the extent that Plaintiff shall provide corrected HIPAA-compliant authorizations for three years prior to the date of the accident (January 2, 2017) through to the present within thirty (30) days (and no later than April 11, 2025); and it is further

ORDERED that the motion is granted in part to the extent that Plaintiff shall produce social media posts referencing her injury within thirty (30) days (and no later than April 11, 2025, but need not disclose login credentials); and it is further

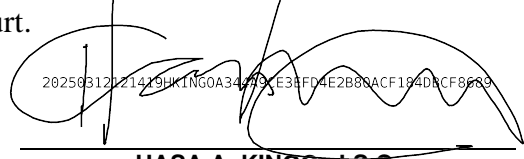
ORDERED that the motion is granted in part to the extent that THE CITY OF NEW YORK shall provide witness information and accident reports within thirty (30) days (and no later than April 11, 2025); and it is further

ORDERED that the remainder of the motion is denied; and it is further

¹ The court notes, however, that in the previously executed stipulation dated January 7, 2025, signed by all parties, Plaintiff agreed to provide the **entire medical records** for the following providers: SPORTS MEDICINE BRONX, BRADLEY WASSERMAN, MD. Accordingly, those authorizations shall have the "**Entire Medical Record**" box in **section 9(a)** checked off.

ORDERED that the parties are directed to appear for a compliance conference in the Differentiated Case Management Part located in Room 103 of the courthouse located at 80 Centre Street, Room 320, on Tuesday April 22, 2025 at 2:00 PM, as previously directed by the court.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

3/12/2025

DATE

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