

McElenney v City of New York

2025 NY Slip Op 31048(U)

April 1, 2025

Supreme Court, New York County

Docket Number: Index No. 160338/2018

Judge: Hasa A. Kingo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 05M

Justice

-----X

TIMOTHY MCELENNEY

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 160338/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to VACATE - DECISION/ORDER/JUDGMENT/AWARD.

With the instant motion, Defendant the City of New York ("the City") moves for an order: (1) vacating this court's order dated January 24, 2025; or, alternatively, (2) granting leave to renew and reargue and, upon reargument, vacating the order dated January 24, 2025; or, alternatively, (3) granting an extension of time pursuant to CPLR § 2004 for the City to comply with the order; and (4) for such other and further relief as this court may deem just and proper. The City contends that compliance with the prior order necessitates additional time and reconsideration of certain discovery obligations.

Plaintiff opposes the motion and has filed a cross-motion seeking enforcement of the January 24, 2025 order in full, arguing that the City has unduly delayed production of relevant discovery and depositions. Plaintiff maintains that the City has failed to demonstrate sufficient justification for vacatur or reconsideration and urges the court to compel strict adherence to the previous directives. Plaintiff further asserts that the City's continued failure to comply with discovery requests prejudices the prosecution of the case and requests that the court impose sanctions if the City does not comply in a timely manner.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of Plaintiff's claim that he sustained injuries due to hazardous conditions on a New York City Street. Plaintiff alleges that the City had prior notice of the defect and failed to take remedial action. During discovery, Plaintiff served multiple demands seeking records from the Department of Transportation ("DOT"), the Department of Environmental Protection ("DEP"), and the Highway Inspection and Quality Assurance unit ("HIQA"). Plaintiff also sought the deposition of a DOT representative responsible for responding to resurfacing requests via "@NYC_DOT" on social media.

On January 24, 2025, this court issued an order directing the City to produce outstanding DOT records, confirm compliance with deposition demands, and address specific discovery disputes. In response, the City engaged in extensive compliance efforts, producing a substantial volume of documents, facilitating the deposition of a DEP witness, and coordinating with HIQA for further testimony. The City now seeks relief in light of these compliance efforts, arguing that additional time is necessary to complete the production of DOT records. Specifically, the City requests an extension of time to provide outstanding DOT records, confirmation that it has complied with prior deposition demands, and judicial intervention concerning the deposition request for a DOT social media representative.

Plaintiff opposes the City's motion and cross-moves to enforce the January 24, 2025 order in full. Plaintiff contends that the City's compliance efforts have been insufficient and that additional depositions are necessary to clarify inconsistencies in prior testimony. Plaintiff also asserts that the requested DOT social media deposition is relevant and that any further delay in compliance would unduly prejudice the prosecution of this case.

ARGUMENTS

The City argues that it has undertaken diligent and extensive efforts to comply with the January 24, 2025 order, producing hundreds of pages of DOT records and facilitating multiple witness depositions. Despite logistical hurdles and the significant volume of requested records, the City contends that it has substantially complied with discovery obligations and that further production requires additional time. The City asserts that the outstanding DOT records are being retrieved in good faith but involve an extensive search process across multiple agencies.

The City further maintains that it has fulfilled Plaintiff's demand for a DEP witness by producing a deponent, making additional depositions unnecessary. Regarding the request for a deposition of a DOT social media representative, the City argues that Plaintiff's demand is speculative and irrelevant, as social media interactions do not constitute official notice of roadway defects under New York law. The City also contends that Plaintiff's discovery requests have become overly burdensome and that judicial intervention is necessary to prevent undue prejudice against the City in defending itself.

Additionally, the City seeks HIPAA-compliant authorizations for Plaintiff's medical records and a Supplemental Bill of Particulars to clarify the scope of Plaintiff's claimed injuries. The City contends that these disclosures are essential to its defense and necessary for a fair adjudication of the matter.

Plaintiff opposes the City's motion and argues that the City has failed to meet its burden of demonstrating entitlement to vacatur or reconsideration of the January 24, 2025 order. Plaintiff asserts that the City had ample time to produce the requested DOT records and that any further delay is unjustified. Plaintiff contends that the City's compliance efforts, while substantial, remain incomplete and that key documents and depositions are still outstanding. Plaintiff maintains that the discovery delays have impeded the progress of the case and that the City's repeated requests for extensions should not be granted absent a clear showing of exceptional circumstances.

With respect to depositions, Plaintiff argues that additional testimony is required to clarify inconsistencies in prior witness statements and to ensure that the appropriate City representatives have been deposed. Plaintiff insists that the deposition of the DOT social media representative is directly relevant, as the City's responses on the "@NYC_DOT" platform may indicate prior acknowledgment of the roadway defect in question. Plaintiff further contends that the City's assertion that social media interactions are immaterial is misplaced, as such communications could demonstrate actual or constructive notice of hazardous conditions.

Plaintiff also maintains that HIPAA-compliant authorizations have already been provided and that the City's demand for a Supplemental Bill of Particulars is both premature and an attempt to create unnecessary procedural obstacles. Plaintiff argues that the focus should remain on compelling full compliance with the court's previous order rather than shifting the burden onto Plaintiff. In sum, Plaintiff urges the court to deny the City's motion, enforce the January 24, 2025 order, and impose sanctions for the City's continued failure to comply in a timely manner.

DISCUSSION

In evaluating the City's motion, the court must apply the well-established legal standards governing discovery, extension of time, and the imposition of sanctions. Under CPLR § 3101, a party is entitled to obtain full disclosure of all matter material and necessary to the prosecution or defense of an action, and courts possess broad discretion to extend deadlines when practical constraints justify such an extension. Moreover, the principles articulated in cases such as *Arons v. Jutkowitz*, 9 NY3d 393, 409 (2007) support a flexible approach when compliance requires an extensive search or inter-agency coordination. Additionally, the standard for vacatur of a court's prior order is stringent, and appropriate only upon a showing "that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; see also *William P. Pahl Equipment Corp. v. Kassiss*, 182 AD2d 22 [1st Dept 1992]; *40 BP, LLC v. Katatikarn*, 147 AD3d 710 [2d Dept 2017]; CPLR § 5015; CPLR § 2221). With respect to sanctions, the court must consider whether a party's conduct rises to the level of willfulness or contumacy, a high threshold that discourages the imposition of severe penalties unless the conduct is egregious (see 22 NYCRR § 130-1.1[a]; *Grozea v. Lagoutova*, 67 AD3d 611 [1st Dept 2009]).

I. Extension of Time to Produce DOT Records

The legal standard under CPLR § 3101 guarantees discovery that is both material and necessary. In the present matter, the City has demonstrated substantial compliance with its discovery obligations by producing hundreds of pages of DOT records and coordinating multiple depositions. Nevertheless, the sheer volume and complexity of the records—spanning documents related to CAR No. 20174060033, Work Order No. 20174060033, and Defect No. 20174060033—necessitate additional time. As established in prior cases, when the production of discovery involves a multifaceted search across various agencies, an extension is not only justified but required to avoid undue prejudice. The City's detailed explanation regarding retrieval logistics and its good-faith efforts are sufficient to warrant an extension of 60 days, with a firm deadline no later than June 2, 2025. This approach aligns with the discretion afforded to the Court under CPLR § 3004, which permits extensions "upon such terms as may be just and upon good cause shown."

II. Deposition of DEP and HIQA Witnesses

Regarding depositions, the legal framework set forth in CPLR § 3107 provides that additional depositions are not mandated once a witness has been deposed, except where new material facts warrant further testimony. The City has satisfied Plaintiff's demand for a DEP witness by successfully deposing a knowledgeable representative. Likewise, the request for a HIQA witness is within the scope of discovery, as testimony concerning roadway inspections is material to this case. Accordingly, the court finds that while the City's compliance in these areas is exemplary, it remains reasonable to order the deposition of one HIQA witness on May 14, 2025, at 10:00 AM to ensure complete disclosure.

III. Deposition of DOT Social Media Representative

Plaintiff's request to depose a DOT witness regarding social media responses is subject to a different standard, as isolated social media postings do not constitute official notice of a defect, and therefore, the relevancy of such testimony is speculative. Consequently, Plaintiff's request is denied as immaterial and unnecessary for the prosecution of the case.

IV. HIPAA-Compliant Authorizations and Supplemental Bill of Particulars

Under the legal standards governing discovery of medical records, as affirmed in *Arons v. Jutkowitz*, 9 NY3d 393, 409 (2007), the City is entitled to obtain disclosures necessary to assess the veracity of the claimed injuries. Plaintiff is required to provide HIPAA-compliant authorizations for the production of medical records related to the hip replacement surgery within 10 days of this order and no later than April 11, 2025. Similarly, a Supplemental Bill of Particulars is warranted where additional claims or inconsistencies exist. Plaintiff shall furnish such a bill within 30 days, no later than May 1, 2025. These requirements ensure that discovery remains balanced and that Plaintiff cannot evade clarifying the scope of his claims.

V. Sanctions and the Request for Vacatur

Plaintiff's cross-motion further seeks to impose sanctions on the City for alleged noncompliance. However, the legal standard for imposing sanctions is stringent and requires a showing of willful or contumacious conduct that significantly impairs the discovery process. As demonstrated by the City's extensive compliance efforts—including timely production of substantial records and the coordination of multiple depositions—there is no basis to conclude that the City acted in bad faith or with deliberate disregard for the court's orders. Moreover, vacatur of the January 24, 2025 order is unnecessary given that the City has substantially complied with the order and merely requires a reasonable extension to finalize the production process. Imposing sanctions in this context would be an unwarranted and disproportionate remedy that would only serve to further delay the proceedings and prejudice the City.

In sum, the analysis of the discovery obligations and the procedural history reveals that the City has acted diligently and in good faith in attempting to comply with the court's directives. While the discovery process is complex and voluminous, necessitating a modest extension to fully

satisfy the production requirements, the City has met its obligations regarding the DEP and HIQA depositions. The request for a deposition concerning a DOT social media representative is properly denied, and the requirements for Plaintiff to provide both HIPAA authorizations and a Supplemental Bill of Particulars are both reasonable and necessary. Finally, the court finds that the imposition of sanctions is inappropriate, as the City's conduct does not rise to the level of willful noncompliance or bad faith. Accordingly, the relief sought by the City is justified, and the cross-motion seeking enforcement of the January 24, 2025 order in its entirety is rejected.

Based on the foregoing, the City's motion is granted to the extent that it obtains an extension of time to produce the outstanding DOT records, while confirming that its compliance efforts regarding the DEP and HIQA depositions are sufficient. Plaintiff is ordered to provide the necessary HIPAA-compliant authorizations and a Supplemental Bill of Particulars within the specified deadlines, and the request for the deposition of a DOT social media representative is denied. Moreover, Plaintiff's request for sanctions against the City is denied. This comprehensive analysis underscores the City's substantial compliance and the reasonableness of its request for additional time, as required by both the applicable legal standards and the interests of justice.

Accordingly, it is hereby

ORDERED that the City is granted an extension of time to respond to Plaintiff's request for Department of Transportation records (Plaintiff's Demand No. 1), including any and all documents submitted in connection with CAR No. 20174060033 and/or Work Order No. 20174060033 and/or Defect No. 20174060033, which shall be provided within 60 days of this order and no later than June 2, 2025; and it is further

ORDERED that the City has satisfactorily complied with Plaintiff's request for the deposition of a witness from the Department of Environmental Protection in connection with CAR No. 20174060033 (Plaintiff's Demand No. 2); and it is further

ORDERED that Plaintiff's Demands No. 3 and No. 4 are resolved to the extent that the City shall produce one (1) HIQA witness for deposition, which shall be held on Wednesday, May 14, 2025, at 10:00 AM; and it is further

ORDERED that Plaintiff's Demand No. 5 for the deposition of a witness from the Department of Transportation—specifically, a witness with knowledge of who responds on behalf of “@NYC_DOT” via X (formerly known as Twitter) and who would have responded to the resurfacing request referenced on page 766 of 865 of the City's Supplemental Response to CSO dated May 1, 2024—is denied, based on the court's finding that such testimony is neither material nor necessary for the prosecution of this case; and it is further

ORDERED that Plaintiff shall provide the City with HIPAA-compliant authorizations for Plaintiff's medical records related to his hip replacement surgery, as well as courtesy copies of any such records in Plaintiff's counsel's possession, within ten (10) days of this order and no later than April 11, 2025; and it is further

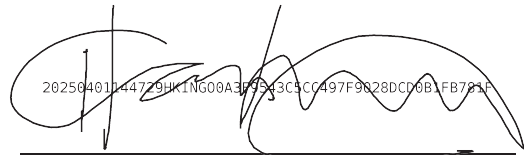
ORDERED that if Plaintiff fails to comply with the aforementioned directive, the City of New York is granted leave to file a motion to compel compliance; and it is further

ORDERED that Plaintiff shall provide the City with a Supplemental Bill of Particulars within 30 days (and no later than May 1, 2025), if necessary, to the extent that Plaintiff intends to assert additional claims not previously raised in this lawsuit; and it is further

ORDERED that Plaintiff's cross-motion is denied in its entirety; and it is finally

ORDERED that the parties shall appear for a compliance conference before the court on Tuesday, June 3, 2025, at 2:00 PM in the Differentiated Case Management Part, Room 103 of the courthouse located at 80 Centre Street, New York, NY.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

4/1/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: