

Laitmon v Amsterdam Nursing Home Corp. (1992)

2025 NY Slip Op 31451(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 805045/2022

Judge: Kathy J. King

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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. KATHY J. KING PART 06

Justice

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PETER LAITMON,

Plaintiff,

- v -

AMSTERDAM NURSING HOME CORPORATION (1992),
POMONOK HOME SERVICES INC, and JANE DOE

Defendants.

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INDEX NO. 805045/2022

MOTION DATE 06/14/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for STRIKE PLEADINGS

Plaintiff moves for an order, pursuant to CPLR 3124, directing Amsterdam Nursing Home Corporation (1992) ("ANH") to comply with Plaintiff's Demand for Disclosure dated May 11, 2022 and, pursuant to CPLR 3126, striking the Answer of ANH, and resolving all issues in favor of and granting judgment to Plaintiff if said discovery demands are not complied with within the time provided by the Court.

Defendant ANH opposes the requested relief and cross moves for:

- (1) a "stay" of the action pending resolution of the guardianship proceedings pursuant to Mental Health Law Article 81;
(2) a Protective Order pursuant to CPLR §3103 as to the production of the meta data/audit trails as outlined in demand #34 of the Plaintiff's Demand for Disclosure dated May 11, 2022;
(3) an enlargement of time pursuant to CPLR §2004 to respond to the remaining demands of Plaintiff's Demand for Disclosure dated May 11, 2022, items #8(a), #8(b), #9(b), #9(c), #12, #14, #44, #52, and #54; and
(4) an order to compel Plaintiff to respond to Defendant's Demand for Authorization and Notice for Discovery and Inspection dated March 14, 2024

The record shows that Plaintiff served a disclosure demand on defendant ANH, on May 11, 2022. Five months later, ANH responded with objections, claiming some were “irrelevant, overbroad, unintelligible, and overly burdensome” (particularly regarding paragraphs #8, #9, #12, #14, #17, #33, #34, #36, #44, #47, and #54 in Plaintiff’s demands). Plaintiff now argues that the demands are neither irrelevant, overbroad, unintelligible, or overburdensome, and moves to strike ANH’s answer based on ANH’s delay in complying with the May 2022 requested demand. In May 2022, the Plaintiff’s requested the following demands:

1. ANH to produce documents mandated by New York regulations regarding patient care, including organizational charts, staffing plans, and policy manuals, that were in effect during the Plaintiff’s residency (#8);
2. ANH’s nursing organizational chart, staffing plan, and nursing service policies and procedures manual (#9);
3. ANH’s daily employee sign-in sheets identifying staff who treated the Plaintiff during his residency (#12);
4. ANH’s flag book or logbook entries concerning the Plaintiff’s care or related events (#14);
5. ANH’s staffing shift schedules for nurses, physicians, dieticians, and nursing assistants who worked in the Plaintiff’s unit during his residency (#17);
6. demands all written materials given to the Plaintiff and his representatives before, during, and after his stay at ANH (#33);
7. all electronic data, including, and especially, audit trails related to the Plaintiff, the Defendant’s treatment and care of the Plaintiff, and/or his current lawsuit (#34);
8. all correspondence, including emails and faxes, between ANH and specified individuals concerning the Plaintiff (#36);
9. copies of any government agency investigation reports related to the Plaintiff’s care, treatment, neglect, or abuse, if any (#44);
10. 24-hour and shift reports from ANH related to the Plaintiff’s wing or hall during his residency (#47);
11. all emails between ANH personnel concerning the Plaintiff, if any (#52); and

12. all M.D. communication books from ANH employees, including the named Defendants, who provided treatment to the Plaintiff (#54).

The Plaintiff contends that ANH's nearly two-year history of willful non-compliance with his demands and this Court's directives necessitates the present motion.

Contrary to Plaintiff's assertions, the Court finds that there is no evidence that the Defendant ANH has acted willfully, or contumaciously as to the demands requested on May 11, 2022 (*see* CPLR 3126; *Corner Realty 30/7, Inc. v. Bernstein Management Corp.*, 249 AD2d 191, 193 [1st Dept 1998]). The extreme sanction of dismissal is warranted only where a clear showing has been made that noncompliance with a discovery order was willful, contumacious or due to bad faith (*Corner Realty 30/7, Inc.*, 249 AD2d at 193). Defendant, in opposition, and in support of its cross motion, has demonstrated that it diligently requested Plaintiff's discovery demands through repeated Investigation Requests and principal follow-ups and participation in discovery conferences where responses were stipulated. Significantly, there is no showing that Defendant acted willfully or contumaciously. Accordingly, the Court denies this branch of Plaintiff's motion and grants Defendant's cross motion upon good cause shown pursuant to CPLR 2004 for an enlargement of time to respond to Plaintiff's May 11, 2022 demands.

As to Plaintiff's discovery demand for the audit trails (Item #34), the Court finds that the audit trails confirm the completeness of the electronic medical records, or lack thereof, and therefore, are material and necessary for Plaintiff's prosecution of this medical malpractice action, and are not duplicative and otherwise privileged (*see London v Mount Sinai Hosp.*, 2023 NY Slip Op 32542[U] [Sup Ct, NY County 2023]); *see Czyz v Scherl*, 2017 NY Slip Op 31465[U] [Sup Ct, NY County 2017]). Accordingly, Plaintiff's requested relief for audit trails is granted and Defendant ANH's cross motion for a protective order is denied.

As to Defendant's cross motion for a stay, the Court acknowledges the parties' February 26, 2025, so ordered stipulation, staying the case for thirty (30) days to address the Plaintiff's newly appointed guardian and amend the caption following a recently concluded guardianship proceeding. Therefore, the Defendant's request for a stay under Mental Health Law Article 81, predicated on the pending guardianship proceeding, is rendered moot.

Regarding the Defendant's cross-motion for an order to compel the Plaintiff to comply with ANH's Demand for Authorizations and Notice for Discovery and Inspection dated March 14, 2024, the Court finds that Defendant ANH failed to address these demands in its requested relief; therefore, this branch of Defendant's cross-motion is denied.

Based on the foregoing, it is hereby

ORDERED that Plaintiff's motion is granted to the extent that ANH is directed to comply with and provide items #8, #9, #12, #14, #17, #33, #34, #36, #44, #47, #52, and #54 in the Plaintiff's Demand for Disclosure dated May 11, 2022, and in all other respects Plaintiff's motion is denied; it is further

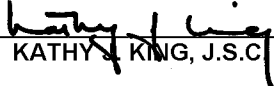
ORDERED that the branch of Defendant's cross motion requesting an enlargement of time to comply with and provide items #8, #9, #12, #14, #17, #33, #34, #36, #44, #47, #52, and #54 is granted and such responses are to be provided within ninety (90) days of the date of this Order; and it is further

ORDERED that in all other respects the Defendant ANH's cross-motion is denied; and it is further

ORDERED that all parties are to appear for a status conference on June 5th, 2025, at 10:00am, at 60 Centre Street, Room #351, New York, NY 10007; and it is further

ORDERED that the Plaintiff is directed to serve a copy of this order upon the Defendant ANH by first class regular mail to its last known address, and its Counsel's mailing address within twenty (20) days of entry of this order.

This constitutes the Decision and Order of the Court.

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| <u>4/21/2025</u> DATE | | | | |  KATHY J. KING, J.S.C. | | | |
| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> | REFERENCE |
| | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

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