

Giurca v Estate of Sadowski

2025 NY Slip Op 31901(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 158095/2023

Judge: Lynn R. Kotler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

-----X

DAN GIURCA,

Plaintiff,

- v -

ESTATE OF ROBERT SADOWSKI, ROBERT SADOWSKI,
PLLC,

Defendant.

-----X

INDEX NO. 158095/2023
MOTION DATE 01/15/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

This is an action for legal malpractice. Non-party MONTEFIORE HEALTH SYSTEM, INC. ("Montefiore") moves for an order to quash plaintiff's subpoena duces tecum served upon them on November 8, 2024, and for a protective order. Plaintiff Dan Giurca ("Giurca") opposes the motion and argues that the documents are relevant to plaintiff's case and that Montefiore failed to meet their burden to show otherwise. For the reasons that follow, the motion is granted.

Facts

As a way of background, Robert Sadowski ("Sadowski") represented Giurca in an action against Montefiore in the U.S. District Court Southern District of New York CASE NO. 1:18-cv-11505-ER-BCM ("Southern District Action").

On August 25, 2020, Giurca executed a Stipulation of Dismissal with Prejudice in the Southern District Action. Subsequently, in 2023, Giurca attempted to reopen the action in the Southern District which request was denied in a decision dated March 20, 2024, by District Court Judge Edgardo Ramos.

In 2020, Giurca commenced a second action in the Supreme Court, Orange County, titled *Dr. Dan Giurca v Orange Regional Medical Center et al*, index number EF000271-2020 (“Orange County Action”). On January 15, 2022, Giurca served Montefiore with a subpoena (“2022 Subpoena”) seeking documents he claimed were relevant to the Orange County Action. On January 28, 2022, Montefiore moved to quash the 2022 Subpoena. On April 11, 2022, Hon. Craig Stephen Brown granted the motion to quash on the grounds that the subpoena was overbroad and unduly burdensome and utterly irrelevant to Giurca’s claims in the action.

On August 15, 2023, plaintiff filed the instant action alleging the following: that Sadowski committed malpractice by failing to properly conduct discovery in the Southern District Action, that Montefiore concealed evidence in the Southern District Action, and that had Sadowski compelled the discovery, the outcome of the action would have been different.

On November 8, 2024, Giurca served Montefiore with a subpoena in this action seeking documents that plaintiff asserts are material and relevant to the allegations in the instant action. Subsequently, Montefiore filed the instant application to quash and for other related relief.

Discussion

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.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v. Crowell–Collier Publ. Co.*, 21 NY2d 403, 406 [1968] [internal quotation marks omitted]). The party moving to quash must show that the discovery sought is either “utterly irrelevant” or that the “futility of the process to uncover anything legitimate is inevitable or obvious” (*Matter of*

Kapon v Koch, 23 NY3d 32, 34 [2014]). If the moving party is able to meet their burden, “the subpoenaing party must then establish that the discovery sought is ‘material and necessary’ to the prosecution or defense of an action” (*id.*)

When the documents sought by the subpoena are relevant, “a subpoena will not be denied enforcement merely because it seeks a large number of documents” (*Matter of Reuters Ltd. v Dow Jones Telerate*, 231 AD2d 337, 344 [1st Dept 1997]). “[S]ubpoenas calling for ‘all documents’ or ‘all papers’ or ‘writings of any kind’ with respect to a particular subject have been repeatedly upheld so long as the information sought is reasonably related to a proper area of investigation” (*Big Apple Concrete Corp. v Abrams*, 103 AD2d 609, 614 [1st Dept 1984]). However, “[t]he proper purpose of a subpoena *duces tecum*, of course, is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding (*People v Kozlowski*, 11 NY3d 223, 242 [2008]).

The non-party subpoena served upon Montefiore on November 8, 2024, fails to comply with CPLR 3101(a)(4) which requires that a subpoena state “the circumstances or reasons such disclosure is sought or required.” Plaintiff’s subpoena contains 32 document requests without providing any explanation, reason or circumstances for why these documents are being sought in this litigation. Accordingly, the subpoena is defective on its face.

Moreover, the 32 different document requests in the subpoena are overbroad and unduly burdensome and seeks documents which are utterly irrelevant to Giurca’s claims in the instant action. Giurca has alleged that certain documents must exist based on discovery provided in the Orange County Action. Plaintiff’s conclusory statements are insufficient to show that the documents he seeks are material and relevant to the instant matter or that the documents he seeks actually exist.

Giurca argues that the subpoena is required to prove his “case within a case” and that, but for the alleged malpractice by Sadowski, he would have won his suit against Montefiore in the Southern District Action. Montefiore contends that Sadowski requested all the documents in the Southern District Action, that Montefiore complied with all the discovery obligations and that the requested documents are in plaintiff’s possession. While Giurca claims that Montefiore is concealing documents, “a subpoena duces tecum ‘may not be used for the purpose of discovery or to ascertain the existence of evidence’” (*Law Firm of Ravi Batra, P.C. v Rabinowich*, 77 AD3d 532, 533 [1st Dept 2010] quoting *People v Gissendanner*, 48 NY2d 543, 551 [1979]). Montefiore has affirmed that they produced all responsive documents in the underlying Southern District Action from which the malpractice claim arises, that 29 of the 32 requests in the subpoena were requested and responded to in the Southern District Action and that the remaining three requests are for “each and every” document related to Dr. Rojas which plaintiff fails to explain how these documents are relevant to his claim.

Giurca previously attempted to circumvent the discovery process by requesting similar documents in the 2022 Subpoena. While the subpoenas are worded differently and seek slightly different information, both relate to documents and communications between Montefiore, Dr. Rojas, and Lonnie Trotta regarding security alert #2017-008. The 2022 Subpoena was quashed and found to be overboard, unduly burdensome and utterly irrelevant, in addition to failing to comply with CPLR 3101(a)(4). The instant subpoena is even more broad and unduly burdensome than the 2022 Subpoena.

Based on the foregoing, the motion to quash the subpoena and obtain a protective order is granted.

Conclusion

In accordance herewith, it is hereby

ORDERED that Montefiore’s motion is granted; and it is further

ORDERED that the subpoena served upon Montefiore is quashed; and it is further

ORDERED that a protective order is granted, and plaintiff Dan Giurca is prevented from seeking any further non-party discovery from Montefiore in the instant action.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

5/22/2025
DATE


LYNN R. KOTLER, J.S.C.

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