

Gonzalez v SL Green Realty Corp.

2025 NY Slip Op 32824(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 159831/2022

Judge: Richard Tsai

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. RICHARD TSAI PART 21

Justice

-----X

FERNANDO RAMOS GONZALEZ,
Plaintiff,

- v -

SL GREEN REALTY CORP., AECOM TISHMAN
CONSTRUCTION CORPORATION, NEW YORK CITY
TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, and ONE MADISON
OFFICE FEE LLC,

Defendants.

-----X

INDEX NO. 159831/2022
MOTION DATE 6/5/25
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 10, 28, 29-61, 63
VACATE/STRIKE - NOTE OF ISSUE/JURY
were read on this motion to/for DEMAND/FROM TRIAL CALENDAR.

Upon the foregoing documents, it is ORDERED that defendants' motion to vacate the
note of issue and to compel plaintiff to provide certain discovery is GRANTED IN PART
TO THE EXTENT THAT, within 30 days, plaintiff shall provide an authorization to
defendants' counsel for the release of the plaintiff's entire record from the Social
Security Administration, and the motion is otherwise denied.

On September 19, 2022, plaintiff allegedly tripped and fell while descending
stairway "O5B" to the entrance of downtown 6 train subway station at 23rd Street and
Park Avenue (see defendants' Exhibit C in support of motion, amended notice of claim
[NYSCEF Doc. No. 34]; see also defendants' Exhibit E in support of motion, bill of
particulars ¶¶ 4-5 [NYSCEF Doc. No. 36]).

When asked at a deposition if plaintiff possesses a Social Security card, plaintiff
answered, "No." (plaintiff's Exhibit I [NYSCEF Doc. No. 40]).¹ In response to a demand
for his Social Security number, plaintiff's counsel answered, "Plaintiff's Social Security
number is not discoverable under New York GBL § 399-ddd" (see bill of particulars ¶ 3).

According to the bill of particulars, plaintiff was employed as a plumber, and has
been unable to return to his employment due to the injuries he allegedly sustained on
September 19, 2022 (bill of particulars ¶ 19).

¹ The deposition transcript that was submitted was not paginated.

On or about July 8, 2024, plaintiff's counsel served a CPLR 3101 (d) disclosure, that an expert economist would testify that plaintiff's income loss, based on his expected retirement, is \$1,789,322, and that his loss of Social Security income is \$150,703 (see defendants' Exhibit A in support of motion, 3101(d) disclosure ¶¶ 7-9 [NYSCEF Doc. No. 32]). Future health care costs will purportedly be \$4,332,131 (*id.* ¶ 14).

On April 11, 2025, plaintiff filed the note of issue (see NYSCEF Doc. No. 28).

Defendants now timely move to vacate the note of issue because plaintiff had objected to providing an authorization for the production of plaintiff's Social Security records (affirmation of defendants' counsel in support of motion ¶ 34 [NYSCEF Doc. No. 31]). Although plaintiff had testified at his deposition that he was not in possession of a Social Security card, defendants obtained a copy of plaintiff's Social Security card (see defendants' Exhibit N in support of motion [NYSCEF Doc. No. 45]).

Defendants also seek to vacate the note of issue because plaintiff did not provide authorizations for the release of employment records for 3 years prior to the date of accident (affirmation of defendants' counsel in support of motion ¶ 37).

Finally, defendants want to strike the note of issue because they are concerned collateral source records, in the form of an authorization for Medicare/Medicaid authorizations, will not be timely received by trial (*id.* ¶ 35). According to defendants' counsel, those authorizations were purportedly provided two weeks before the plaintiff had filed the note of issue, even though defendants' counsel had been demanding those authorization s "for years" (*id.*).

In opposition, plaintiff argues that disclosure of plaintiff's Social Security number is unwarranted, citing *Bibeau v Cantiague Figure Skating Club, Inc.* (294 AD2d 525 [2d Dept 2002]) and other cases (affirmation of plaintiff's counsel in opposition ¶ 13 [NYSCEF Doc. No. 47]). Plaintiff's counsel also asserts that plaintiff does not have a Social Security number (*id.*). Plaintiff's counsel points out that, in plaintiff's response dated March 28, 2025, plaintiff's counsel responded that plaintiff had neither applied for, nor is a recipient of Medicaid and/or Medicare (see defendants' exhibit M ¶ 4 [NYSCEF Doc. No 44]). Lastly, plaintiff asserts that defendants' claim that discovery is incomplete "is a red herring, designed simply to delay the setting of a trial date" (affirmation of plaintiff's counsel in opposition ¶ 19).

On June 5, 2025, the court heard oral argument, which was not on the stenographic record. At oral argument, it was conceded that plaintiff provided authorizations for the release of records from MetroPlus Health. Thus, there are no longer any issues regarding collateral source authorizations; the sole discovery issues to be decided are (1) whether plaintiff must provide an authorization for the release of records from the Social Security Administration; and (2) whether defendants are entitled to 3 years of employment records and W2s from plaintiff.

As a threshold issue, plaintiff's argument that defendants did not engage in a good faith effort to resolve the issue is unavailing. Defendants' compliance with 22 NYCRR 202.7 is excused because further good faith attempts to resolve the dispute non-judicially would have been futile (*see Perez v Kone*, 166 AD3d 555 [1st Dept 2018] [any deficiencies in [defendants'] good faith affirmation are inconsequential, since any effort to resolve the dispute would have been futile given the plaintiff's emphatic insistence that no discovery remains outstanding]; *Loeb v Assara New York I L.P.*, 118 AD3d 457, 458 [1st Dept 2014]).

Defendants are entitled to an authorization for the release of plaintiff's entire record from the Social Security Administration. Such disclosure is reasonably calculated to lead to admissible evidence as to calculation of the alleged loss of Social Security retirement benefits.

Generally speaking, to be eligible to receive Social Security retirement benefits, "an individual must be (1) fully insured; (2) has attained age 62; and (3) has filed an application for benefits" (42 USC § 402[a]). Under the Social Security Act, any individual who has at least "40 quarters of coverage," is a "fully insured individual" (42 USC § 414 [a] [2]). Thus, the authorization sought would lead to evidence as to whether plaintiff has sufficient credits or will earn sufficient credits to be eligible to receive any Social Security retirement benefits at all. As defendants point out, plaintiff testified at his statutory hearing that he did not know if taxes were collected from each paycheck or if Social Security contributions were taken out (*see* defendants' Exhibit D in support of motion, hearing tr at 12, line 11 through 13, line 5 [NYSCEF Doc. No. 35]).

Defendants are not obligated to accept, at face value, the representation of plaintiff's counsel that plaintiff does not have a Social Security number, especially given that defendants obtained a copy of a Social Security card purportedly belonging to plaintiff (*see* defendants' Exhibit N in support of motion [NYSCEF Doc. No. 45]).

Bibeau (294 AD2d 525) and the other cases that plaintiff cites are inapposite. Those cases involved the issue of whether the defendant was entitled to discovery of the plaintiff's tax returns, which is not being sought here. To the extent that plaintiff could argue that the law which disfavors discovery of personal income tax returns should be extended to apply to Social Security records, defendants have demonstrated the necessity for such discovery. Plaintiff placed those records into controversy by seeking loss of Social Security retirement benefits. Additionally, the information about whether plaintiff has earned or is capable of earning sufficient credits to be eligible for Social Security retirement benefits cannot be obtained from any source other than the Social Security Administration's own records.

At oral argument, plaintiff's counsel argued that directing plaintiff to furnish the authorization would violate *Watts v American BD Co.* (220 AD3d 631 [1st Dept 2023]), *Fitzpatrick v Consolidated Resistance Co. of Am., Inc.* (205 AD3d 773, 775 [2d Dept 2022]) and *Lindsay v CG Maiden Member, LLC* (211 AD3d 638 [1st Dept 2022]).

Plaintiff's counsel also asserted that the economist's calculation was based solely the plaintiff's age and earnings as of the date of the incident.

Plaintiff's reliance upon *Watts*, *Fitzpatrick*, and *Lindsay* is misplaced. Those cases all involved the issue of whether the plaintiff had placed their entire medical history at issue, such that the defendants would be entitled to authorizations for the release of medical records. Because medical records are privileged, the defendant must show that the plaintiff had waived the physician-patient privilege as to the records that the defendant sought, so as to be entitled to such discovery (see *Cynthia B. v New Rochelle Hosp. Med. Ctr.*, 60 NY2d 452, 456 [1983]). Social Security records, however, are not privileged. In any event, plaintiff has affirmatively placed those records at issue by seeking to recover for the loss of Social Security retirement benefits.

That plaintiff's expert did not base their calculations on the plaintiff's actual earnings record does not restrict defendants from seeking discovery of plaintiff's Social Security earnings record, if any, to refute the calculations of the plaintiff's expert, or to challenge any assumptions of the plaintiff's expert (i.e., that plaintiff had earned or will earn enough quarters of coverage to be entitled to Social Security retirement benefits).

Finally, although not raised by plaintiff in the opposition papers, General Business Law § 399-ddd (which was raised in objection to the demand for plaintiff's Social Security number) has no application here. General Business Law § 399-ddd (6) provides, in relevant part:

"No person *may file any document available for public inspection* with any state agency, political subdivision, or *in any court of this state that contains a social security account number of any other person*, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule."

The statute does not prohibit an authorization for the release of records from the Social Security Administration, which would not be filed with the court.

Thus, the branch of defendants' motion to compel plaintiff to provide discovery is granted to the extent that, within 30 days, plaintiff shall provide an authorization to defendants' counsel for the release of plaintiff's entire record from the Social Security Administration.

The branch of defendants' motion to compel plaintiff to provide an authorization for the release of employment records for 3 years prior to the date of the alleged incident is denied.

Contrary to the contention of defendants' counsel, the preliminary conference order did not direct plaintiff to provide 3 years of employment records prior to the date of the alleged incident. In a preliminary conference order entered December 22, 2023,

plaintiff was directed to provide authorizations for the release of plaintiff’s employment records for the period “of 9/19/20 to present to the extent not previously provided” (see NYSCEF Doc. No. 21). As the incident allegedly occurred on September 19, 2022 (see bill of particulars ¶ 4), the preliminary conference order therefore directed plaintiff to provide authorizations for only 2 years prior to the alleged incident.

As defendants’ counsel points out, the preliminary conference order was entered on December 22, 2023, and plaintiff was directed to release records from “9/19/20 to present.” Thus, defendants would have expected to receive records from September 2020 through September 2023. Although defendants’ counsel claims that plaintiff provided authorizations for two years’ worth of records, defendants counsel did not provide of a copy of the authorization that was, in fact, furnished, and did not specify which year(s) was then missing (i.e., 2020, 2021, 2022, or 2023).

The branch of plaintiff’s motion to vacate the note of issue is denied. Because the only discovery directed is an authorization for the release of records, the court exercises its discretion to allow discovery to continue without vacating the note of issue, thereby causing no delay in the trial. “Trial courts are authorized, as a matter of discretion, to permit post-note of issue discovery without vacating the note of issue, so long as neither party will be prejudiced” (*Cuprill v Citywide Towing and Auto Repair Services*, 149 AD3d 442, 443 [1st Dept 2017]; see *Pickering v Union 15 Rest. Corp.*, 107 AD3d 450, 451 [1st Dept 2013] [the court could have allowed the IME without vacating the note of issue]).

There is no prejudice to defendants. Given the current wait time on the trial calendar (where there is no special trial preference), it might be a year (or longer) before the case is called for jury selection.



20250808160351RTSAI9920075138814300952986CA602A2238

<u>8/8/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE