

Fleurant v City of New York

2025 NY Slip Op 33787(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 158728/2015

Judge: Adam Silvera

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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. ADAM SILVERA PART 01

Justice

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PRADEL FLEURANT,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
TRANSIT AUTHORITY

Defendant.

INDEX NO. 158728/2015
MOTION DATE 03/04/2025
MOTION SEQ. NO. 004

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 127, 128, 129, 130

were read on this motion to/for

VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR

Upon the foregoing documents, it is ordered that the motion of defendant the City of New York (the City) seeking additional discovery and vacatur of the note of issue is granted in part, for the reasons set forth below. Defendant New York City Transit Authority (Transit) joins the City's request for such relief and adopts the City's arguments in support. Plaintiff opposes.

This is an action to recover damages for personal injuries that Plaintiff incurred after he allegedly slipped and fell on a wet, slippery condition on the subway platform at the Canal Street subway station on March 15, 2015. The City served its notice of exchange of expert disclosure of Dr. Pierce J. Ferriter, an orthopedic surgeon, in February 2020. The note of issue was filed on August 5, 2022. Plaintiff served a notice of expert exchange for Harold Bilasky, D.C., M.A., C.R.C., C.L.C.P. on January 22, 2025. Pursuant to the exchange, Mr. Bilasky is a disability expert and life care planner and will testify as to Plaintiffs need for future health care and associated costs.

The City now seeks to vacate the note of issue on the grounds that material discovery is incomplete. The City asserts that it was not aware of the extent of Plaintiff's right ankle injury until

Plaintiff's expert exchange of Mr. Bilasky, which was served two and a half years after the filing of the note of issue. Namely, the City argues that it was not previously aware that the Plaintiff would require a lifetime charge of right ankle steroid injections and therapeutic modalities or a right ankle arthrodesis surgery.

The City, joined by Transit (together, Defendants), specifically seek to compel Plaintiff to attend a further deposition; provide Defendants with HIPAA-compliant ARONs authorizations for NY-Presbyterian-Lower Manhattan and the FDNY Ambulance Call Report; provide a complete set of HIPAA-compliant authorizations for all medical providers and records reviewed by Mr. Bilasky; and to complete Independent Medical Examinations (IMEs) with an orthopedic surgeon and Dr. Jennifer Canter (vocational rehabilitation and life care planning). In the alternative, Defendants seek to preclude Plaintiff from introducing evidence as to his physical condition at trial pursuant to CPLR 3126.

Plaintiff opposes, arguing that Defendants do not demonstrate any reason to vacate the note of issue or permit post-note discovery. Plaintiff asserts that Mr. Bilasky reviewed the same medical records as the City's expert, Dr. Ferriter, and Plaintiff already provided the City with HIPAA compliant authorizations for all facilities where he sought medical treatment for the injuries he sustained in the subject accident. Plaintiff further posits that Defendants have been aware of his right ankle injury since he served his verified bill of particulars and testified at his 50-H hearing, both in 2015. Furthermore, Plaintiff argues that his condition has not materially changed since he was examined by the City's orthopedic expert on December 16, 2019, and he has not supplemented his bill of particulars. He concludes that he is within his right to retain the services of a life care planner to provide an assessment of his future medical needs.

Pursuant to 22 NYCRR § 202.21(d), “[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.” Here, Defendants demonstrate the unanticipated circumstance of expert disclosure over two years after the filing of the note of issue. Notably, Plaintiff’s expert disclosure contemplates extensive treatment for Plaintiff’s right ankle, which Defendants are entitled to inspect. To deny Defendants the opportunity to rebut Plaintiff’s expert disclosure could result in substantial prejudice. *See Karakostas v Avis Rent A Car Sys.*, 306 AD2d 381, 382 (2d Dept 2003) (holding that where plaintiff served his expert disclosure after the note of issue was filed, unusual or anticipated circumstances were present to justify additional discovery).

This Court has broad discretion to direct post-note of issue discovery to avoid prejudice. *See Valencia v City of New York*, 188 AD3d 549 (1st Dept 2020). Therefore, the motion is granted to the extent of permitting post-note of issue discovery and directing Plaintiff to appear for the requested IMEs, while the case remains on the trial calendar. Plaintiff must participate in further discovery and appear for examinations with an orthopedic surgeon with respect to the right ankle injury and Dr. Jennifer Canter regarding vocational rehabilitation and life care planning. Defendants would be prejudiced by an inability to gain discovery as to the extent of Plaintiff’s ankle injury or to rebut his expert life care plan. Conversely, compelling Plaintiff to appear for post-note IME would not result in prejudice as Plaintiff’s case will be retained on the trial calendar. *See Rivera-Martinez v New York City Tr. Auth.*, 14 AD3d 654, 655 (2d Dept 2014). Thus, Defendant’s motion is granted to the extent of permitting post-note IMES, while the matter remains on the trial calendar.

The motion is denied to the extent that Defendants seek to compel Plaintiff to attend a further deposition, provide HIPAA-compliant ARONs authorizations for NY-Presbyterian Lower Manhattan and the FDNY Ambulance Call Report, and provide a complete set of HIPAA-compliant authorizations. With respect to the authorizations, Plaintiff annexes to his opposition papers previously executed authorizations for the requested documents, which are the same records reviewed by Mr. Bialsky. To the extent Defendants now seek to interview medical providers in addition to receiving their files, Defendants do not show that such request arises out of the unusual circumstance of the belated expert disclosure. Similarly, Defendants do not establish the need for an additional deposition of Plaintiff.

Accordingly, it is ORDERED motion of defendants the City of New York, joined by the New York City Transit Authority, is granted in part; and it is further

ORDERED that the Plaintiff shall complete IMEs with an orthopedic surgeon and Dr. Jennifer Canter, which shall be designated and scheduled within 45 days of the date of this order; and it is further

ORDERED that the parties shall appear on December 16, 2025 at 9:30 a.m., in Room 252 of 60 Centre Street, New York, NY for a pre-trial conference; and it is further

ORDERED that, within 30 days of entry, Defendants shall serve upon all Plaintiff a copy of this Decision and Order, together with Notice of Entry.

This constitutes the Decision and Order of the Court.

ADAM SILVERA, J.S.C.

10/6/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE