

Cervasio v St. Francis Hosp.
2025 NY Slip Op 35432(U)
February 7, 2025
Supreme Court, Nassau County
Docket Number: Index No. 607065/2022
Judge: Conrad D. Singer
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUP R E S E N T : HON. CONRAD D. SINGER,
Justice

TRIAL PART: 18

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GRACE CERVASIO,

Plaintiff,

Index No.: 607065/2022

Motion Seq. Nos.: 005 and 006

Motions Submitted: 11/20/2024

-against-

DECISION AND ORDER ON
MOTIONSST. FRANCIS HOSPITAL and CATHOLIC HEALTH
SERVICES OF LONG ISLAND, TOWNE PARK, LTD. and
TOWNE PARK, LLC A/K/A TOWNE PARK SERVICES,
LLC,Defendants.
-----X

The following papers have been read on these motions:

Plaintiff's Motion to Quash Subpoena to Plaintiff's Treating Physician [Seq. 005]

Notice of Motion and Supporting Papers [Seq. 005]X

Defendants' Affirmation in Opposition and in Support of Cross-Motion [Seq. 005].....X

Defendants' Notice of Cross-Motion to So-Order Subpoena [Seq. 006]

Notice of Cross-Motion and Supporting Papers [Seq. 006].....X

Affirmation in Opposition to Cross-Motion [Seq. 006].....X

Reply Affirmation in Further Support of Cross-Motion [Seq. 006].....X

Upon the foregoing e-filed documents, the application interposed by the Plaintiff, GRACE CERVASIO ["Plaintiff"], for an Order pursuant to CPLR 3103 and 2304 quashing Defendants', ST. FRANCIS HOSPITAL and CATHOLIC HEALTH SERVICES OF LONG ISLAND ["Defendants"], Subpoena Ad Testificandum of Dr. Alexandre DeMoura, Plaintiff's treating physician [Seq. 005], and the Cross-Motion by the Defendants for an Order denying the Plaintiff's Motion to Quash and granting Defendants' Cross-Motion to have the Subpoena Ad Testificandum as to Dr. Alexandre DeMoura So-Ordered by the Court, are consolidated for disposition and are determined as follows:

The Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained in an incident that occurred on December 6, 2021, in the parking lot adjacent to the Vizza Pavilion parking garage entrance located at St. Francis Hospital, on or near 100 Port Washington Boulevard, Roslyn, NY 11576. The Plaintiff alleges that she sustained a neck and back injury that required surgery after being struck by a parking lot gate at the Vizza Pavilion. She alleges that as a result of the incident, she sustained severe injuries, and required an anterior cervical discectomy at C5-6-7 on April 19, 2022. This surgery was performed by non-party Dr. Alexandre DeMoura ["Dr. DeMoura"], who had been treating the Plaintiff since on or about 2015 for cervical radiculopathy, spasms, and herniated discs at C4-5 and C5-6-7 which were allegedly the result of prior accidents and incidents involving the Plaintiff.

The Defendants seek to serve non-party Dr. DeMoura with a Subpoena Ad Testificandum requiring him to appear for an oral deposition at the Defendants' office on November 12, 2024. The proposed subpoena also demands that Dr. DeMoura "produce at such examination all original medical record [*sic*], original billing record [*sic*], reports, writings, papers, statements, documents, photographs, correspondence, audio/video/tape recordings, emails, etc., in their possession relative to Plaintiff's alleged issues herein". The Plaintiff has previously provided Defendants with Arons and HIPAA authorizations with respect to Dr. DeMoura.

Contrary to the arguments advanced by the Plaintiff, the Defendants are not required to demonstrate the existence of "special circumstances" to subpoena the Plaintiff's treating physician. In *Reda v. Port Auth. Of NY & NJ*, 188 AD3d 1278, 1279 [2d Dept 2020], the Second Department reversed the trial court's order granting the Plaintiff's motion to quash subpoenas ad testificandum served upon non-party treating physicians of the Plaintiff's Decedent. The Second Department

held that under CPLR 3101[a][4], “the party who served the subpoena has an initial minimal obligation to show that the nonparty was apprised of the circumstances or reasons that the disclosure is sought, and once that is satisfied, it is then the burden of the person resisting the subpoena to establish the inevitability or obviousness of the futility of the process to uncover anything legitimate or that the information sought is utterly irrelevant to any proper inquiry”. (*Reda*, 188 AD3d at 1279; citing to *Matter of Kapon v. Koch*, 23 NY3d 32, 38-39 [2014]).

In this case, just as in *Reda*, the Defendants have established that “they provided the subpoenaed nonparty treating physician[] with adequate notice of the circumstances or reasons requiring disclosure”, which then shifted the burden to the Plaintiff to establish that the disclosure sought was irrelevant to the action”. (*Reda*, 188 AD3d at 1279). Contrary to the Plaintiff’s contentions, the Court need not grant Plaintiff’s motion to quash simply because the Plaintiff has complied with all discovery obligations and provided necessary authorizations permitting the Defendants to speak to Dr. DeMoura and obtain his records. The Plaintiff has not otherwise established that the disclosure sought by the subpoena “is irrelevant to the action” [*Reda*, 188 AD3d at 1279], and the Plaintiff’s motion to quash [Seq. 005] shall be **DENIED**.

The portion of the Defendants’ Cross-Motion [Seq. 006] which seeks denial of the Plaintiff’s motion to quash is **GRANTED**, consistent with the foregoing. However, the Defendants also ask the Court to So-Order the Subpoena Ad Testificandum as to Dr. Alexandre DeMoura. Under CPLR 2302(a), counsel for the Defendants is authorized to issue the proposed subpoena ad testificandum in relation to Dr. DeMoura without having the subpoena so-ordered by the Court. Furthermore, CPLR 2302(b) and CPLR 2307 govern the circumstances under which a subpoena must be issued by the Court, and it does not appear that either provision applies to the

subject subpoena. Therefore, the portion of the Defendants' motion which seeks to have the proposed subpoena so-ordered shall be **DENIED**.

Accordingly, it is hereby,

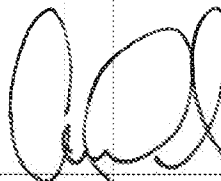
ORDERED, that the Plaintiff's motion to quash the proposed subpoena ad testificandum [Seq. 005] is **DENIED**; and it is further,

ORDERED, that the portion of the Defendants' cross-motion which seeks an Order denying the Plaintiff's motion is **GRANTED**, and the portion of the Defendants' cross-motion which requests that the proposed subpoena be so-ordered is **DENIED**; and it is further,

ORDERED, that all other requests for relief not specifically addressed herein shall be deemed **DENIED**.

This constitutes the Decision and Order of this Court.

Dated: February 7, 2025
Mineola, New York



HON. CONRAD D. SINGER, J.S.C.

ENTERED
Feb 18 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE