

Navarro v Joy Constr. Corp.

2026 NY Slip Op 30053(U)

January 8, 2026

Supreme Court, New York County

Docket Number: Index No. 155606/2018

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

EMILIO MORA NAVARRO,
Plaintiff,

- v -

JOY CONSTRUCTION CORPORATION, CARE REALTY
CORP., YYY WEST 36TH STREET, LLC

Defendants.

-----X

INDEX NO. 155606/2018
MOTION DATE N/A
MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208

were read on this motion to/for DISCOVERY

Defendants' motion to compel is granted in part as described below.

Background

In this Labor Law case, plaintiff contends that he was erecting a suspended scaffold when he fell nearly 8 feet and landed on top of a sidewalk bridge located below. Plaintiff was working as a foreman for non-party Colgate, and he was in charge of five workers. He testified that he was installing the sides of the scaffold, about 8 feet high, when the accident occurred (NYSCEF Doc No. 137 at 169). Plaintiff explained that he had both a harness and a lanyard but could not tie off in this area because of the presence of a tree (id. at 170). He admitted, however, that it was his job as a supervisor to find the tie off points and that he decided to work at that height without finding a tie-off point (id.). Plaintiff explained that as he was walking, one of the planks was raised 3 inches and he tripped over the raised plank and fell (id. at 183-84). Defendant YYY

West 36th Street LLC owned the property, defendant Joy Construction Corp. was the general contractor and defendant Care Realty Corp. managed the property.

Here, defendants move this Court for an order: (1) compelling the plaintiff to serve responses to defendants' demand for litigation funding company information and documents and demand for loan information, both dated March 13, 2025; (2) for a supplemental response to defendants' demand for trial authorizations dated July 11, 2025; (3) compelling an updated trial authorization for Montefiore New Rochelle Hospital Radiology Department allowing defendants to obtain plaintiff's entire radiological records and films, including, but not limited to, plaintiff's 2014 and 2015 admissions; and (4) for such other and further relief as the Court deems just, proper and equitable.

Turning first to the March 13, 2025 demands, defendants detail that during an early settlement conference on May 14, 2024, plaintiff revealed that he had entered into a Third-Party Litigation Financing ("TPLF") agreement during the course of this proceeding. Defendants served a demand for loan information and a demand for litigation funding company information and documents, both on or around March 13, 2025. The demand for loan information seeks documents pertaining to any loan made to plaintiff in connection with this lawsuit (NYSCEF Doc. No. 202). The demand for litigation funding company information and documents seeks the production of documents from the company that is providing litigation funding to plaintiff including the name of the company, the date the agreement was made, the amount of the loan, copies of all information provided to the lender, and authorizations for the release of records from the lender (NYSCEF Doc. No. 203).

Defendants argue that this information is relevant and discoverable because the plaintiff would have necessarily had to divulge information to the financing company, as the company

must have had to evaluate the likeliness of plaintiff succeeding and the likely amount of recovery. Defendants argue that any information plaintiff shared with the financing company would not be covered by attorney-client privilege, and that this information is therefore discoverable. Defendants also argue that the agreement itself is discoverable because it is probative of plaintiff's financial means, which are relevant to his ability to mitigate damages related to lost wages and his ability to obtain medical treatment. Defendants further assert that TPLF companies often condition the receipt of funds on the completion of a surgery, so plaintiff may be claiming damages for procedures that he did not actually need. Lastly, defendants say that disclosure of the TPLF information is necessary to provide lien information which is relevant to plaintiff's ability to settle this matter.

The rest of defendants' complaints center around their demands for trial authorizations dated July 11, 2025, attached at NYSCEF Doc. No. 200. In the demands, defendants requested that plaintiff provide trial authorizations to a list of facilities, including Montefiore New Rochelle Hospital and Montefiore New Rochelle Hospital – Radiology Department. Plaintiff alleges that among the injuries he sustained from the accident are disc herniations and soft tissue injuries on his lumbar spine. During plaintiff's deposition, defendants learned that plaintiff had previous injuries to his lower back for which he was treated at Montefiore New Rochelle Hospital in 2014 and 2015, well before the date the accident occurred (January 31, 2017). Plaintiff responded to the demands on August 15, 2025, but defendants claim that his response was insufficient for the following reasons: 1) Montefiore requires a separate authorization to access records from its radiology department which was not provided, 2) the authorization that was provided only permits access to records generated after January 31, 2017 (thereby excluding records from

plaintiff's purported hospital visits in 2014 and 2015), and 3) the authorization was made out to the Bronx County Supreme Court, rather than to New York County Supreme Court.

Defendants ask the Court to order plaintiff to provide new authorizations for all the medical records listed in the demands, that these authorizations must identify the proper venue to ensure that the parties can access the records in the course of trial, and that these authorizations must also include permission to obtain plaintiff's 2014-2015 medical records from Montefiore New Rochelle Hospital.

Plaintiff opposes. As to the trial authorizations that were made returnable to Supreme Court in the Bronx, plaintiff shows that it fixed this issue (NYSCEF Doc. No. 205). Plaintiff also included authorization for the radiology department at Montefiore as well as for the hospital generally. Plaintiff claims that the branch of defendants' motion which seeks information related to the July 11, 2025 demand for trial authorizations has therefore been rendered moot. Plaintiff also states that the part of defendants' motion which seeks information related to the TPLF has been rendered moot, as it provided a payoff letter from Weingarten Financial Funding ("Weingarten") indicating a funding lien of \$958,066.18 through November 1, 2025 at NYSCEF Doc. No. 207.

Defendants disagree that their motion has been rendered moot; in their reply they detail that while plaintiff responded to the litigation and funding loan information demands by providing a letter from Weingarten, no proper responses to the demands were provided and no authorization for records from Weingarten was provided. Then, defendants confirm that the although the county was corrected in plaintiff's trial authorizations, the authorizations are still date-restricted to records that were generated after the incident. Defendants say that although

plaintiff provided trial authorizations for records to be sent to the Court, it still has never provided a proper authorization for their office to obtain the records and films directly.

Discussion

Trial Authorizations

CPLR 3101 (a) dictates that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action...” “Materiality and necessity must be interpreted liberally to require disclosure . . . of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. [A]ny matter which may lead to the discovery of admissible proof is discoverable, as is any matter which bears upon a defense, even if the facts themselves are not admissible” (*H.M. v R.C. Diocese of Brooklyn*, 242 AD3d 735 [2d Dept 2025] [internal citations omitted]).

Here, the Court finds that defendants have met their burden to show that the information they seek regarding the trial authorizations is relevant and discoverable. If plaintiff seeks to recover for injuries to his lower back, of course it is relevant that if he had prior issues with his back for which he sought medical treatment, defendant should have those records. The Court does not find plaintiff’s correcting the caption in the authorization without changing the substance to be productive.

The Court therefore orders plaintiff to provide authorizations to access plaintiff’s full records at Montefiore New Rochelle Hospital and Montefiore New Rochelle Hospital – Radiology Department dating back from January 1, 2014 to the present and to obtain the records directly. The Court also orders plaintiff to provide authorizations for each of the facilities listed on defendants’ July 11, 2025 demands and to allow defendants to obtain the records directly.

Demands for Loan and Litigation Funding Company Information

Plaintiff already provided the lien information, the amount of the loan, and the company that issued the loan (“Weingarten”), but he never responded to the March 13, 2025 demands in full and never provided the authorization. Defendants still seek formal responses to the demands and a trial authorization to obtain records from Weingarten.

Defendants cite to *ROAM Capital, Inc. v Asia Alternatives Mgt. LLC* (235 AD3d 457 [1st Dept 2025]) to support the proposition that there is no attorney-client privilege to shield plaintiff’s dealings with Weingarten. However, the facts there are distinguishable from the instant case and do not support defendants’ claims that the information they seek is discoverable. In *ROAM*, the First Department held that “Supreme Court did not improvidently exercise its discretion in ordering production of communications with potential litigation funders” (*id.* at 458). Indeed, that case was about communications with *potential* litigation funders. In the original order, the Supreme Court opined that “[t]he documents ... do not contain privileged discussions or work product. Most are not close calls. For instance, a solicitation email sent by a prospective funder that lacks any legal discussion is certainly not privileged” (*Roam Capital, Inc. v Asia Alternatives Mgt. LLC*, 2024 NY Slip Op 31811[U], *1 [Sup Ct, NY County 2024]). This is clearly different than the present case where the communications sought are not with potential litigation funders, but with the actual litigation funder.

Defendants’ other arguments are essentially that they are entitled to the information about plaintiff’s dealing with Weingarten because plaintiff’s access to funds might have had a bearing on his ability to mitigate his damages as to lost wages, on his ability to afford medical treatment, and whether he was incentivized to seek potentially unnecessary medical treatment.

Plaintiff revealed he entered into a TPLF agreement at some point in the course of this proceeding at a settlement conference on May 14, 2024. While the exact date that plaintiff entered into the agreement is not before the Court, plaintiff sat for two depositions in 2020 during both of which he was asked whether he had received a litigation funding loan, and both times he responded in the negative (NYSCEF Doc. No. 137 at 66; NYSCEF Doc. No. 138 at 15). Furthermore, in the second part of plaintiff's deposition, he extensively discusses his medical treatment and the surgery he underwent after the accident (NYSCEF Doc. No. 138). So, all of the medical treatments and surgery of which the Court is aware predated the TPLF agreement and the loan would not have had any bearing on plaintiff's ability to mitigate his damages from lost wages, to be able to afford medical treatment, or on whether he was incentivized to get unnecessary procedures to get a payout from the litigation funding company.

In *Lituma v Liberty Coca-Cola Beverages LLC* (___AD3d___, 2025 NY Slip Op 06389 [2025]), the First Department upheld a Supreme Court order to compel information regarding a plaintiff's litigation funding agreement, but the facts are distinguishable. There, the Court found that the information was relevant to defendant's affirmative defense and counterclaim for fraud – the defendants suspected that the accident had been fabricated and that access to the loan records might reveal a financial motive for faking the accident. So, the Court ruled that access to the loan information was material and necessary to the fraud claim and may reveal a financial motive relevant to the fraud-related claims.

Here, defendants do not suggest that the accident was fabricated, and they have no counterclaims. Rather, defendants want to go on fishing expedition because they do not know what they might find that might help their defense. That is not good enough to allow the additional discovery defendants seek.

Defendants already know the name of the funder. They were concerned about settlement – now they know the amount of the funder’s lien, so they have an idea about settlement (that is, the settlement amount certainly would have to be above the lien amount). They were concerned that the funder controlled the litigation, but now that the funder is reduced to a lien, that is a non-issue. Should this become an issue, defendants may make another motion seeking an affirmation from plaintiffs’ attorney affirming that the funder does not direct the litigation strategy and the Court will consider it; the Court is not willing to order it now because plaintiff’s attorney has not had the opportunity to oppose such a specific request.

Defendants were concerned that Weingarten encouraged unnecessary medical treatment and surgeries to increase the value of the recovery, mitigate lost wages damages, and helped him afford medical care; however, based on what is before the Court, plaintiff’s surgery and medical treatments occurred before the loan was issued (and while he was out of work). Therefore, defendants have not, on this record, shown a basis to get discovery from this litigation funder in this case.

Summary

The Court finds that defendants are entitled to supplemental trial authorizations that allow them to directly access the records they seek in their July 11, 2025 demands and are also entitled to access plaintiff’s medical records going back to 2014. Plaintiff’s prior injury is clearly relevant to his claim for damages related to the injuries from the subject accident in the same part of his body, his lower back. The Court therefore grants the part of defendants’ motion seeking to compel that information.

The Court does not find that the materials defendants sought in their March 13, 2025 demands for loan and litigation funding company information are material and necessary for

defendants to prove their defenses and therefore denies the branch of their motion seeking to compel production of that information at this time.

Accordingly, it is hereby

ORDERED that, by January 29, 2026, plaintiff must provide authorizations to access plaintiff’s full records at Montefiore New Rochelle Hospital and Montefiore New Rochelle Hospital – Radiology Department dating back from January 1, 2014 to the present and for defendants to obtain those records directly; and it is further

ORDERED that, by January 29, 2026, plaintiff must provide authorizations for each of the facilities listed on defendants’ July 11, 2025 demands and must allow defendants to obtain the records directly; and it is further

ORDERED that defendants’ motion is denied to the extent that it seeks to compel the information contained in their March 13, 2025 demands relating to plaintiff’s litigation funding agreement.

01/08/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
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"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE