

Ravit v Simon Props. Group, Inc.

2012 NY Slip Op 33242(U)

February 8, 2012

Supreme Court, New York County

Docket Number: 112723/2010

Judge: Emily J. Goodman

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 112723/2010
RAVIT, ZELDA
vs.
SIMON PROPERTY GROUP, INC.
SEQUENCE NUMBER : 001
COMPEL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1+3
Answering Affidavits — Exhibits _____ | No(s) 4-5
Replying Affidavits _____ | No(s) 6

Upon the foregoing papers, it is ordered that this motion is *decided by the answer*
memorandum decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

FEB 14 2012

NEW YORK
COUNTY CLERK'S OFFICE

[Signature]

J.S.C.

EMILY JANE GOODMAN
 NON-FINAL DISPOSITION

Dated: 2/8/12

- 1. CHECK ONE: CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----X
ZELDA RAVIT and HERBERT RAVIT,

Index No.: 112723/2010

Plaintiffs,

DECISION & ORDER

-against-

FILED

SIMON PROPERTIES GROUP, INC., and
HOLLISTER CO.,

FEB 14 2012

Defendants.

NEW YORK
COUNTY CLERK'S OFFICE

-----X

EMILY JANE GOODMAN, J.S.C.:

Plaintiffs sue defendants for injuries arising from a fall down indoor stairs at the Roosevelt Field Mall on Long Island. During depositions, defendants learned that a few hours prior to her fall, Ms. Ravit visited her ophthalmologist. In motion sequence 001, defendants seek Ms. Ravit's ophthalmologists records for July 20, 2010, the date of the incident, on the theory that her eyesight was compromised from treatments she underwent that date (motion sequence 001). In a separate motion, plaintiffs move to strike the answer for failure to produce a copy of relevant surveillance videotape, showing Ms. Ravit's fall, in "a format that is viewable to plaintiff's counsel" (motion sequence 002).

Doctor's Records

Plaintiffs oppose releasing that record on the ground that Ms. Ravit has not placed her eyesight at issue, and the record is protected by the physician-patient privilege. They

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cite to *Iseman v. Delmar Medical-Dental Building, Inc.* (113 AD2d 276 [3rd Dept 1985]), which held that the physician-patient privilege "extends to pretrial matters, and plaintiff's response to questions posed by her adversary at an examination before trial does not constitute voluntarily disclosing privileged information so as to warrant defendant's entitlement to depose her personal physician" (*id.*).

While the information regarding treatment on her eyes mere hours before her fall appears relevant, the plaintiff has not placed her eyesight into issue, and her responses to defendant's questions do not waive her physician-patient privilege. Further, defendants never questioned Ms. Ravit about what procedures she had at the ophthalmologist, when they had the opportunity to do so at her deposition. Exchanging otherwise privileged medical records is not a substitute for asking direct questions to the party under oath.

Defendant argues that *Iseman* should not apply because, here, it only seeks to review a medical record and not take a doctor's deposition. This distinction does not change the result. Accordingly, the holding in *Iseman* is controlling, and the motion to compel is denied.

Surveillance Video Tape

Plaintiffs argue that the defendants have refused to comply with a compliance conference order requiring the turn over

[* 4]

of surveillance tapes that showed Ms. Ravit's fall. They state that Defendants have produced a copy of the video in its "native format," which is unviewable, and demand that Defendants provide a copy in the format that Plaintiffs counsel can view.

Defendants argue that they have turned over the only copy of the evidence that exists, and that Plaintiffs' counsel was invited to view the video (which was in its native format) at Defendants' counsel's office. Plaintiffs' counsel did so. Further, defendants provided instructions on how to view the files in the "native format" (Bermack Aff, Ex. B). The instructions explain how to download and install a "video codec" for "windows media player," a common electronic media viewer available on most, if not all, modern computers. Plaintiffs' respond that the instructions do not work.

Simply put, this dispute does not warrant the striking of the answer. Defendants have materially complied with the requirements of the CPLR. They affirm that they have turned over a copy of the video data in the same (and only) format that they have. Plaintiffs' do not deny they have possession of that data, and the instructions on how to view it. Moreover, plaintiffs have not described a format that would be satisfactory.

To the extent that the physical copy provided to the plaintiffs could be defective, Defendants are directed to supply plaintiffs with another copy of the video in its "native format"

within twenty days of entry of this order.

In light of the foregoing, it is hereby

ORDERED that defendants' motion to compel (Motion Sequence 001) is denied; and it is further

ORDERED that plaintiffs' motion to strike the answer (Motion Sequence 002) is denied; and it is further

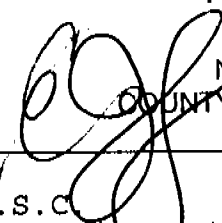
ORDERED that Defendants are directed to supply Plaintiffs with a new copy of the relevant surveillance video within twenty days of entry of this order.

FILED

Dated: February 8, 2012

FEB 14 2012

Enter:



NEW YORK
COUNTY CLERK'S OFFICE

J.S.C.

EMILY JANE GOODMAN