Stukes v Puthumana
2018 NY Slip Op 33965(U)
December 10, 2018
Supreme Court, Nassau County
Docket Number: 605219/2017
Judge: Jeffrey S. Brown
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

----------X	**TRIAL/IAS PART 12**
JAMES E. STUKES,	
Plaintiff,	**INDEX # 605219/2017**
-against-	
	Mot. Seq. 1
JUNY J. PUTHUMANA and C.A. PUTHUMANA,	**Mot. Date 11.15.18**
	Submit Date 11.15.18
Defendants.	
----------X	

The following papers were read on this motion: E File Docs Numbered

Notice of Motion, Affidavits (Affirmations), Exhibits Annexed	12
Answering Affidavits (Affirmations)	30
Reply Affidavit	35

Defendants move for an order striking this action from the calendar and vacating the certificate of readiness, compelling the plaintiff to provide outstanding discovery, and extending the time for defendant to file a motion for summary judgment.

A note of issue was filed on October 4, 2018. In opposition to this motion, plaintiff argues that all items of discovery have been complied with. In reply, defendants focus on the alleged deficiencies in plaintiff's responses to post-deposition demands that were served simultaneously with the making of this motion. Accordingly, although these items were not a subject of the initial motion, for the sake of expediency, the court will issue directives concerning items that remain in dispute. Additionally, rather than vacate a note of issue, the court has the discretion to order post note of issue discovery provided neither party will be prejudiced. (*Cabrera v. Abaev*, 150 AD3d 588 [1st Dept. 2017]).

As an initial matter, CPLR 3101 sets the bounds of discovery and provides that "[t]here shall be full disclosure of all matter ***material and necessary*** in the prosecution or defense of an action, regardless of the burden of proof . . ." The phrase "material and necessary" is accorded a liberal construction and requires "disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay

and prolixity. The test is one of usefulness and reason." (*Allen v. Cromwell-Collier Pub. Co.*, 21 NY2d 403 [1968]). In addition, the term necessary has been "held to mean 'needful' and not indispensable." (*Id.* at 407). Although the rules contemplate a liberal interpretation of the breadth of disclosure, "[i]t is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims. (*Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421; *see Quinones v. 9 E. 69th St., LLC*, 132 AD3d at 750)." (*D'Alessandro v. Nassau Health Care Corp.*, 137 AD3d 1195, 1196 [2d Dept 2016]).

Regarding items 4, 8, 9, 10, and 13 of defendants' post-deposition demands, plaintiff did not object to the demands but instead denied possessing knowledge and information. Upon review of the demands and the accompanying testimony, plaintiff is directed to make a reasonable search for the information requested by items 4, 8, 9, 10, and 13 and should no additional responsive information be identified, plaintiff shall supply defendant with a duly sworn affidavit by the person having conducted the search.

With respect to items 11 and 12, which seek authorizations to obtain plaintiff's Facebook and Snap Chat accounts "without limitation," plaintiff objected to these demands as overly broad, not relevant, and without a good faith basis in fact. The Court of Appeals has recently rejected the requirement that before obtaining social media disclosures "defendants must establish a factual predicate for their request by identifying relevant information in plaintiff's Facebook account," such as information "that contradicts or conflicts with plaintiff's alleged restrictions, disabilities, and losses, and other claims." (*Forman v. Henkin*, 30 NY3d 656 [2018] [discussing *Tapp v. New York State Urban Dev. Corp.*, 102 AD3d 620 [1st Dept 2013]]).

The relevance of certain materials on plaintiff's social media accounts has been demonstrated by plaintiff's own deposition testimony and where he had posted photographs and videos of himself exercising and not just, for arguments sake, photographs of his pets or children. However, the *Forman* court further rejected the notion that "commencement of a personal injury action renders a party's ***entire*** Facebook account automatically discoverable," explaining that "[d]irecting disclosure of a party's entire Facebook account is comparable to ordering discovery of every photograph or communication that party shared with any person on any topic prior to or since the incident giving rise to litigation — such an order would be likely to yield far more nonrelevant than relevant information." Providing guidance to the trial courts, the Court of Appeals continued:

> [C]ourts addressing disputes over the scope of social media discovery should employ our well-established rules — there is no need for a specialized or heightened factual predicate to avoid improper "fishing expeditions." In the event that judicial intervention becomes necessary, courts should first consider the nature of the event giving rise to the litigation and the injuries claimed, as well as any other information specific to the case, to assess whether relevant material is likely to be found on the Facebook account. Second, balancing the potential utility

> of the information sought against any specific "privacy" or other concerns raised by the account holder, the court should issue an order tailored to the particular controversy that identifies the types of materials that must be disclosed while avoiding disclosure of nonrelevant materials. In a personal injury case such as this it is appropriate to consider the nature of the underlying incident and the injuries claimed and to craft a rule for discovering information specific to each. Temporal limitations may also be appropriate — for example, the court should consider whether photographs or messages posted years before an accident are likely to be germane to the litigation. Moreover, to the extent the account may contain sensitive or embarrassing materials of marginal relevance, the account holder can seek protection from the court (see CPLR 3103 [a]).

(*Forman v. Henkin*, 30 N.Y.3d at 665).

With these guidelines in mind, plaintiff is directed to produce all photographs and videos of himself after the accident that were privately posted on either Facebook or Snap Chat, excepting any of a romantic or prurient nature. (*See id.*; *Doe v. Bronx Prep. Charter School*, 160 AD3d 591 [1st Dept 2018]).

For the foregoing reasons, it is hereby

ORDERED, that defendants' motion to strike is **denied** and defendants' motion to compel is **granted**, in part; and it is further

ORDERED, that plaintiff is directed to provide materials in accordance with this order within 14 days of service of a copy of notice of entry; and it is further

ORDERED, that the defendants' time to move for summary judgment is extended for 90 days from the date of this order.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
December 10, 2018

ENTER:

HON. JEFFREY S. BROWN
J.S.C.

ENTERED

DEC 12 2018

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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