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September 2, 2021

VIA ECF

Honorable Robert W. Lehrburger
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Levente Nagy v. MHP Land Associates, LLC, et al.
Case No.: 19-cv-06395-PGG

Judge Lehrburger:

We represent plaintiff, Levente Nagy, in the above captioned matter. Unfortunately, this letter is necessary due to a disagreement that has arisen regarding the scheduling of the defense Medical Exam.

As Your Honor may recall, the Court held a conference with the parties on August 18, 2021, regarding the close of discovery in this matter. At said conference, this Honorable Court precluded defendants from taking a further deposition of the plaintiff, but ordered that plaintiff “.....make himself available for an Independent Medical Exam which shall be completed by October 11, 2021.” [See Doc. No. 70].

On August 19, 2021, our office was contacted via email by a representative from Dr. Spivak, defendants’ medical expert, who informed us that the defense Medical Exam had been scheduled for 7 A.M. on Monday October 11, 2021 - which is Columbus Day. This office immediately responded and requested that the medical exam instead be scheduled for later that day, during normal business hours. Thereafter, counsel for defendants responded via email stating that the only date Dr. Spivak is available is at 7 A.M. on October 11, 2021, and that Dr. Spivak “has graciously accommodated this Independent Medical Exam.”¹

That same day, the undersigned responded to defense counsel stating that it was unreasonable to schedule a defense Medical Exam for 7 A.M., especially on October 11, 2021, which is a national holiday. In the same correspondence, the undersigned unequivocally informed defense counsel that Mr. Nagy is ready, willing, and able to appear for a defense Medical Exam on any weekday between the hours of 9 A.M. and 5 P.M. Further, to the extent that Dr. Spivak would be unavailable on any weekday during normal business hours, I reminded defense counsel

¹ This comment was quite curious considering Dr. Spivak is a hired gun, who is well compensated by defendants.

that he could simply hire another doctor to perform the examination before the Court's deadline. We received no response from defense counsel.

The undersigned sent another email to defense counsel on August 26, 2021, again reiterating that plaintiff is ready, willing, and able to appear for the defense Medical Exam on any day Monday through Friday— between 9 A.M. and 5 P.M. - before and including October 11, 2021.

On September 1, 2021, defense counsel finally responded by again stating that Dr. Spivak's only availability for the rest of this year is October 11, 2021, at 7 A.M., and that the time/date selected is not unreasonable. Defense counsel ignored our suggestion to simply hire a different doctor to perform the examination of plaintiff.

First, it is clearly unreasonable to ask plaintiff, who is very injured, to get up well before sunrise and travel from Brooklyn to Dr. Spivak's office in Manhattan – on a national holiday. Additionally, as a representative from our office will be attending the examination with plaintiff, as is plaintiff's right, it is also unreasonable to force said representative to attend a Medical Exam at such an early hour. Further, a Hungarian translator will also be necessary in order for the defense doctor to conduct the Medical Exam. Simply put, it is clearly unreasonable to force plaintiff, a representative from plaintiff's counsel's office, and a translator, to all attend a 7 A.M. medical examination, just because it is allegedly *the doctor's only availability*.

Second, Your Honor's Order did not say that Dr. Spivak, and only Dr. Spivak, was to perform the Medical Exam of the plaintiff. I have personally made it clear to defense counsel that Mr. Nagy will make himself available on any date, at any time, during normal business hours, and if Dr. Spivak is not available during those hours, defendants can retain another doctor who is available.

Accordingly, plaintiff respectfully requests that defendant be ordered to schedule the Medical Exam of plaintiff by September 10, 2021, and, further, that said Medical Exam be conducted on or before October 11, 2021, between the hours of 9 A.M. to 5 P.M. Monday through Friday, or that the Medical Exam be deemed waived.

Respectfully,

/s/

Kyle C. Bruno (KB1122)

CC:

Via ECF – All Counsel

Defendant has not responded to this letter request. The request is GRANTED in part and DENIED in part for substantially the reasons set forth in the letter. Defendant's offering of the doctor's availability for a medical exam is unreasonable. Accordingly, by **September 17, 2021**, Defendant shall schedule the medical exam of Plaintiff to take place on or before October 11, 2021 between the hours of 8:30 a.m. and 5:30 p.m. If Defendant's current doctor of choice cannot be available in that time frame, then Defendant will need to find another doctor who can be; otherwise, Defendant's request to conduct a medical exam will be deemed waived.

SO ORDERED:

9/9/2021


HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE