

Pagan v City of New York

2012 NY Slip Op 32943(U)

November 29, 2012

Sup Ct, NY County

Docket Number: 105486/10

Judge: Geoffrey D. Wright

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

JUDGE GEOFFREY D. WRIGHT

PRESENT: _____
Justice

PART 62

Index Number : 105486/2010
PAGAN, DIANA
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 002

The following papers, numbered 1 to 7, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1

Answering Affidavits — Exhibits _____ No(s) 45

Replying Affidavits _____ No(s) 6

cross motion and memo
Upon the foregoing papers, it is ordered that this motion is

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*Decided in accordance with the annexed
here to decision.*

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

FILED

DEC 13 2012

NEW YORK
COUNTY CLERK'S OFFICE


GEOFFREY D. WRIGHT
AJSC

Dated: 11/29/12

_____, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
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 STATE OF NEW YORK
COUNTY OF NEW YORK

DIANA PAGAN,

Plaintiff

Index #105486/10

-against-

DECISION

THE CITY OF NEW YORK, and The
NEW YORK CITY HOUSING AUTHORITY

Defendants

Present:
Hon. Geoffrey D. Wright
Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in review of this Motion to dismiss or preclude or compel discovery and cross-motion for a protective order.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed.....	<u> </u>
Answering Affidavits.....	<u>4,5</u>
Reply Affidavits.....	<u>6</u>
Exhibits.....	<u> </u>
Other..cross-motions.....and memo.....	<u>2,7</u>

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Upon the foregoing cited papers, the Decision/Order on this Motion and cross-motion is as follows:

The New York City Housing Authority ("NYCHA") seeks to obtain disclosure from Plaintiff or preclude any offer of evidence at trial based on the information sought, or in the alternative compel Plaintiff to comply with the discovery demands. In opposition, Defendant cross-moves for a protective order for the information sought. The only issue currently before this Court is the issue of discovery. The issue of scheduling Plaintiff's deposition has already been resolved between the parties. Plaintiff's cross-motion is denied and Defendant's motion is granted to the extent discussed below.

This is an action to recover for personal injuries sustained when Plaintiff was caused to trip and fall on May 27, 2009. The Plaintiff sustained injuries to her knees as a result of the accident. Defendant NYCHA seeks broad disclosure of Plaintiff Diana Pagan ("Plaintiff") physical and mental condition before and after the injury alleged in the complaint. It is NYCHA's contention that Plaintiff placed her entire medical and psychiatric history in contention by her allegation in the Bill of Particulars of "resultant diminution of her economic and social

capacity." Defendant interprets this language as a claim for "loss of quality of life" and therefore makes her entire medical condition pre- and post- accident open to discovery.

Plaintiff contends that she is not claiming loss of quality of life, as those words do not appear in the Bill of Particulars and therefore her prior medical treatment is not discoverable. Plaintiff cross-moves for a protective order. In the alternative Plaintiff argues that if this Court should find a loss of quality of life claim, NYCHA's claim are palpably improper because they seek records of such irrelevant entities as the social services organizations plaintiff attended and are based only on a printout of the plaintiff's Medicaid billing records.

"It is well settled that a party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR . . . when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue" Cynthia B. v New Rochelle Hosp. Med. Ctr., 60 NY2d 452, 456-457 [1983]; Dillenbeck v Hess, 73 NY2d 278 [1989]; Avila v 106 Corona Realty Corp., 300 AD2d 266, 267 [2002]) and that CPLR 3101 (a) requires full disclosure of all evidence material and necessary to the prosecution or defense of an action, regardless of the burden of proof. However, the principle of "full disclosure" does not give a party the right to uncontrolled and unfettered disclosure, and the trial courts have "broad power to regulate discovery to prevent abuse." Barouh Eaton Allen Corp. v International Bus. Machs. Corp., 76 AD2d 873m 874 [1980]).

In Plaintiff's Bill of Particulars she claims to have sustained the following injuries:

- 1) Tear of the posterior horn of the medial meniscus of the left knee;
- 2) Abrasions of the bilateral knees;
- 3) Effusion and tenderness of the bilateral knees; and
- 4) Spain, strain and decreased range of motion of the bilateral knees.

In addition, the Bill of Particular states: "that by reason of the injury to the left medial meniscus, with the rupture and tearing of the ligaments and musculature constituting the supportive structures of the knee, Plaintiff suffered and continues to suffer from pain, tenderness, restriction and limitation of motion of the knee and leg, difficulty in weight bearing, wobbliness and locking of the knee. That by reason of the injury to the right knee, Plaintiff suffered and still does suffer from effusion, swelling, pain, tenderness, restriction and limitation of motion of the knee and leg, buckling of the knee, difficulty in bending, squatting and stair-climbing, recurrent persistent limping, with increased intensification of symptomatology on inclement weather, exertion or fatigue. Plaintiff has been advised and verily believes that the aforesaid injuries are of a chronic and protracted nature, which has resulted in permanent residuals and/or sequelae;

and her prognosis is guarded.”

Plaintiff argues that her claim for “resultant diminution of her economic and social capacity” is not the same as a claim for loss of quality of life. Notably, Plaintiff does not explain how the two claims differ or what “resultant of diminution of economic and social capacity” is. After reading Plaintiff’s Bill of Particulars this Court fails to see how the two claims differ. Webster’s dictionary defines the word diminution as: *the act of diminishing, or of making or becoming less; state of being diminished; reduction in size, quantity, or degree.* In other words, a decrease or lessening of her economic and social capacity. Indeed, “*a rose is a rose by any other name,*” and Plaintiff is attempting to circumvent the discovery process by renaming a loss of quality of life claim. Plaintiff’s Bill of Particular states she is still suffering from restriction and limitation of the knee and leg as a result of her injuries. It is hard to see how this is not a claim for loss of quality of life. Plaintiff’s cross-motion for a protective order is denied.

NYCHA is seeking authorizations for the reports and records of Social Security Disability arguing that Plaintiff received Social Security disability before the accident and that such records go to her physical condition and quality of life. Plaintiff is directed to provide NYCHA with authorizations for reports and records of Social Security regarding the plaintiff dating back 2 years from the date of the accident to the date of this decision.

The request for authorization for the reports and records of Plaintiff’s internist Dr. Ariyibi (phonetic spelling) is denied. NYCHA has not shown relevance or how this is related to Plaintiff’s knee injury.

It does not appear to this Court (and Plaintiff states in her papers) that she is not making a psychiatric claim, as such, the authorizations for Johnson Counseling Center, Dr. Carlos Sanchez and social worker Miranda Dawkins (phonetic spelling) are denied.

To the extent that NYCHA seeks authorizations for reports, records and film of Union Settlement Association, and the Puerto Rican Family Institute, this request is denied. NYCHA has not shown or explained what these organizations are and how this information is material and necessary to their case. (CPLR § 3101(a); Allen v Crowell-Collier Publ. Co., 21 N.Y.2d 403, 288 N.Y.S.2d 449, [1968]).


NYCHA seeks authorizations for Mt. Sinai D&T Center, Dr. Zvi Lekowitz, Dr. Tracy Lynn Faroisch and Dr. Leonard Bukhman. Plaintiff is claiming no recollection of treatment. NYCHA’s request is denied with leave to renew once Plaintiff is deposed.

Lastly, NYCHA seeks an unlimited authorization from Second Avenue Pharmacy. Plaintiff previously provided an authorization limited to the date of loss. NYCHA’s request for an unlimited authorization is denied with leave to renew once Plaintiff has been deposed.

All authorizations are to be provided within 20 days of the service of the notice of entry of this Decision.

This is the Decision and Order of this Court.

Dated: November 29, 2012


GEOFFREY D. WRIGHT
AJSC

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court

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