

Pierce v Sebastian Intl., Inc.
2013 NY Slip Op 33951(U)
August 29, 2013
Supreme Court, Bronx County
Docket Number: 308059/2008
Judge: Laura G. Douglas
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 11

-----X
Andrea Pierce,

Index No. 308059/2008

Plaintiff,
- against -

DECISION/ORDER

Sebastian International, Inc., Kolman Laboratories, Inc.,
The Wella Corporation, Cosmetics Plus, Inc., Cosmetics
Plus 57th Street Ltd. and Cosmetics Plus Group Ltd.,
Defendants.

Present:
HON. LAURA G. DOUGLAS
J.S.C.

-----X

Motion by defendants' Sebastian International Inc. and The Wella Corporation (collectively, "Sebastian") for an order: a) granting an *in camera* inspection of plaintiff's pre-accident Court records from the case entitled *Montefiore Hospital v. Andrea Pierce*, Index No. 353/2002 and b) upon review, granting the Sebastian defendants access to those records, subject to a Confidentiality Order, is granted solely as set forth below.

This is a product liability personal injury action seeking monetary damages for personal injuries allegedly sustained by plaintiff in March 2008 when a certain hair gel product ignited after application and after she had lit a cigarette. In addition to her physical injuries, plaintiff claims that her pre-existing mental health conditions were exacerbated by this incident.

According to the Sebastian defendants, discovery proceedings have revealed that the "[p]laintiff has a very significant, three-decade long pre and post-incident mental health history, which specifically includes, but is not limited to, (a) long-term treatment and numerous involuntary hospitalizations for paranoid schizophrenia, major depressive disorder with severe psychosis, and (b) a post-accident evaluation for obsessional preoccupation with fire."

More specifically, according to the moving papers, "[i]n connection with a review of [p]laintiff's mental health records, it was revealed that, in or about 2002, Montefiore Medical Center, as petitioner, commenced an action in this Court against Ms. Pierce, as respondent, pursuant to New York's Mental Hygiene Law to require [p]laintiff to participate in an Assisted Outpatient Treatment Program. I searched the Bronx County Clerk's

computer for actions commenced by Montefiore against Ms. Pierce which revealed the following caption: Montefiore Hospital v. Andrea Pierce, Bronx County Index No. 353/2002. Those records may be sealed.”

In support of the instant motion, citing *Dillenbeck v. Hess*, 73 NY2d 278 (1989) and supporting cases, namely *Cynthia B. v. New Rochelle Hosp. Med. Ctr.*, 60 N.Y.2d 452 (1983), and *DeLouise v. S.K.I. Wholesale Beer Corp.*, 79 A.D.3d 1092 (2d Dept. 2010), the Sebastian defendants contend, in substance, that “where a plaintiff in a personal injury case affirmatively places her mental condition at issue, her psychiatric records, both pre and post-accident, are discoverable by defendants.” “In this case, Ms. Pierce affirmatively placed both her physical and mental health at issue. Specifically, she claims that her mental conditions (e.g. major depressive psychosis/schizophrenia) have been exacerbated by the March 18, 2008 incident. Plaintiff does not dispute that [d]efendants are entitled to Ms. Pierce’s extensive psychiatric history and, in fact, she has already provided a number of authorizations to obtain those records. The only known remaining psychiatric records that [d]efendants have not been able to obtain relate to her Court records. The sole apparent basis for her objection to those records is because those records may be sealed by the Court.” Further, referencing *Bobrowsky v. Toyota Motor Sales, U.S.A. Inc.*, 261 A.D.2d 349 (2d Dept. 1999), counsel argued that, at trial, extrinsic evidence such as the plaintiff’s psychiatric records may be used to impeach plaintiff during cross-examination. In sum, counsel asserted that “[u]ndoubtedly, before the Court can hold such a proceeding and before the Court can direct a person to participate in state-supervised Assisted Outpatient Program, a person must be deemed mentally ill and adjudged to be a danger to herself or others.” Hence, counsel asserted that they are entitled to all of the plaintiff’s records, including mental health records, for impeachment purposes.

In contrast, plaintiff’s counsel’s in his “Affirmation In Opposition,” dated April 12, 2012, in response to the companion motion by defendant Kolmar Laboratories, Inc. (“Kolmar”), dated March 16, 2012¹, argued, in substance, that “absolutely no showing has

¹ The companion motion by defendant Kolmar Laboratories, Inc., dated March 16, 2012, sought an order: a) compelling plaintiff to provide an authorization for the release

been made] whatsoever of any need to obtain copies of what are presumably sealed Court proceedings regarding any [of] plaintiff's competency/institutional hearings." "All relevant information about plaintiff's prior mental health care issues and treatment are obtainable by defendants by processing the numerous authorizations for her actual treatment records which were previously provided. Defendant Kolmar has provided absolutely no meaningful identification information regarding these alleged Court proceedings, such as caption or index numbers. Such Court proceedings are typically sealed not only to protect the individual who is the subject matter of such proceedings, but also to protect such individual's siblings, parents and/or other family members as may be required to participate in such proceedings. Clearly, the testimony and affidavits as may appear in such file obtained from family member or friends of the plaintiff would not be admissible for any purposes at trial, and should not be subject to discovery by defendants."

Upon analysis of statutory authority and the relevant case law, as well as the submitted papers, this Court determines, under the circumstances of this case, that an *in camera* inspection shall be conducted of the file contents of the above-referenced proceeding for the purpose of deciding what, if any, record(s) are discoverable by the defendants in the case at bar. Here, plaintiff has alleged, in her Response To Interrogatories dated January 20, 2011 (interrogatories served by Kolmar), specifically at Item 9, that her injuries include, regarding her "history of treatment for depression and anxiety" and "plaintiff's pre-existing and previously diagnosed mental disorders," that such have been "exacerbated, aggravated, amplified and/or otherwise made worse as a result of the negligent acts and omissions on the part of defendants complained of herein and the injuries resulting there from." Moreover, at Items 10, 12, and 19 therein, plaintiff has alleged future medical expenses for "ongoing psychological therapy, psychiatric consultation and prescription psychotropic medication reasonably anticipated to be required by plaintiff over the duration of her anticipated lifetime due to the injuries suffered by plaintiff," future confinement for "resulting mental anguish, depression and despair," and

of her records for the social worker, Mr. Kurkowski, and for "New York City Department of Mental Health and Hygiene Assisted Outpatient Program," and b) to compel plaintiff to comply with a prior Compliance Conference Order, dated December 21, 2011.

(as a result of her scarring) "mental, psychological and emotional trauma and damages, including aggravation and exacerbation of her previously diagnosed mental disorder, such that plaintiff now suffers from depression, anxiety, agitation, confusion sleeplessness and nightmares." Since plaintiff has put her physical and mental condition at issue in this case, this Court, at a minimum, in the interest of justice, must unseal the plaintiff's pre-accident Court records from the case entitled: *Montefiore Hospital v. Andrea Pierce*, Index No. 353/2002 and, upon such unsealing, conduct an *in camera* inspection of the entire record of the proceeding to determine what items, if any, are properly discoverable and should be provided to the defendants, subject to a contemporaneous confidentiality order. After the unsealing of the aforementioned prior proceeding, this Court shall schedule a conference with counsel to conduct an *in camera* inspection.

Accordingly, it is hereby

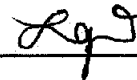
ORDERED, that the court file in the matter of *Montefiore Hospital v. Andrea Pierce*, Index No. 353/2002, be unsealed solely for purposes of an *in camera* inspection to be conducted by this Court; the Clerk shall furnish said file directly to my Chambers at Room 521.

This constitutes the decision and order of this Court.

DATED:

8-29-13

Bronx, New York



Hon. Laura G. Douglas, J.S.C.