

Rivera v 6141 Broadway Assoc., LLC

2013 NY Slip Op 32344(U)

August 22, 2013

Sup Ct, Bronx County

Docket Number: 307408/2010

Judge: Laura G. Douglas

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This opinion is uncorrected and not selected for official publication.

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

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SALVADOR RIVERA,

Index No. 307408/2010

Plaintiff(s),

- against -

DECISION/ORDER

6141 BROADWAY ASSOCIATES, LLC, SHUR
MANAGEMENT CO. LTD AND SOLID STATE
ELEVATOR CORP.,

Present:

Defendant(s).

**HON. LAURA G. DOUGLAS
J.S.C.**

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Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows;

This motion by defendants 6141 Broadway Associates, LLC and Shur Management Co. Ltd. (collectively, "6141 Broadway") seeking to compel plaintiff to 1) provide authorizations relative to prior physical injuries; 2) provide authorizations relative to his mental health condition; and 3) to respond to other outstanding items of discovery is granted solely to the extent ordered below, and is otherwise denied.

The plaintiff seeks compensation for injuries allegedly sustained on February 7, 2010 when he claims that an elevator door closed upon him. The injuries alleged in his bill of particulars involve his shoulders.

A party is entitled to full disclosure of all matter which is material and necessary in the prosecution and defense of an action (see CPLR § 3101 [a]). It is well settled that, in determining the types of material discoverable by a party to an action, whether something is "material and necessary" under CPLR 3101(a) is "to be interpreted liberally to require 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 (see *Allen v. Cromwell-Collier Publi. Co.*, 21 N.Y.2d 403 [1968]). If there is any possibility that the information sought in good faith for possible use as evidence-in-chief or in rebuttal or for cross-examination, it should be considered evidence material and necessary in the prosecution or defense and thus should be disclosed pursuant to CPLR 3101(a) (see *Lau*

v. Pescatore Parking Inc., et al., 105 A.D.3d 594 [1st Dept. 2013], citing *Allen v. Cromwell-Collier Publi.Co.*, id at 407).

With respect to 6141 Broadway's demand for an authorization releasing the plaintiff's no-fault records pertaining to a 2008 motor vehicle accident, the plaintiff is directed to provide a courtesy original authorization for said records. The Order of Hon. Douglas E. McKeon dated September 19, 2011 explicitly directed the plaintiff to provide unrestricted authorizations for all medical records pertaining to said accident.

6141 Broadway also seeks authorization(s) to obtain records regarding the plaintiff's 2006 motor vehicle accident in which he apparently injured his knee, records regarding a purported prior lumbar fracture, and records concerning a purported prior knee replacement surgery. Here, the plaintiff makes no claim of injury to his knee or back, and no claim of any aggravated or exacerbated condition. The relevancy of these requests is not demonstrated by way of any deposition testimony or medical evidence. While a claim of "loss of enjoyment of life", as the plaintiff pleads here, opens the door to certain discovery not directly linked to the physical injuries alleged (*see Moreira v. M.K. Travel and Transport, Inc.*, 106 A.D.3d 965 [2nd Dept. 2013] (plaintiff's mental health records) and *Vanalst v. City of New York*, 276 A.D.2d 789 [2nd Dept. 2000] (previous back injuries)), it may also be determined that the prior injuries are sufficiently distinct and that the claimed injuries are relatively new complaints, such that discovery of the plaintiff's entire medical history is not appropriate (*see Bennett v. Gordon*, 99 A.D.3d 539 [1st Dept. 2012]). Such is the case here. 6141 Broadway has not met their burden of showing that the requested records are relevant to a physical condition that the plaintiff has put at issue through any pleading or statement.

6141 Broadway also seeks authorization(s) to obtain records related to "a prior back injury which left him permanently disabled from work" pursuant to their written demand dated May 13, 2011. The plaintiff denies any such work-related accident in 2009. The record before this Court does not contain any probative evidence to determine whether such an accident did occur.

Finally, 6141 Broadway seeks authorization(s) permitting the release of the plaintiff's mental health records. The grounds upon which these are sought involve the appointment

of a guardian *ad litem* for the plaintiff in certain landlord-tenant proceedings. The affirmed report of the examining doctor in that proceeding documents plaintiff's history of certain mental health and cognitive deficits, and their effects upon his life. As described, these conditions definitely bear upon his ability to "enjoy" and "experience" life, a claim for damages which the plaintiff has plead in the instant action. The defendants are entitled to discovery to determine the extent, if any, to which the plaintiff's damages are attributable to conditions other than the one(s) at issue here (*see Pirone v. Castro*, 82 A.D.3d 431 [1st Dept. 2011] and *Rega v. Avon Products v. Pitney Bowes., et al*, 49 A.D.3d 329 [1st Dept. 2008]). Accordingly, these records are material and necessary to rebut this item of damages. For the same reasons, the plaintiff shall provide an authorization to release Social Security records concerning any confirmed disability.

Accordingly, it is hereby

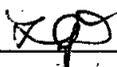
ORDERED, that the plaintiff provide defendants 6141 Broadway Associates, LLC and Shur Management Co Ltd. with a duly-executed original authorization permitting the release of the plaintiff's no-fault file pertaining to his 2008 motor vehicle accident no later than 20 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that the plaintiff provide defendants 6141 Broadway Associates, LLC and Shur Management Co Ltd. with a duly-executed original authorization(s) permitting the release of the plaintiff's mental health records no later than 20 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that the plaintiff provide defendants 6141 Broadway Associates, LLC and Shur Management Co Ltd. with a duly-executed original authorization(s) permitting the release of the plaintiff's Social Security disability records, or an affidavit stating that he is not receiving such benefits and is not under such a disability, no later than 20 days following service of a copy of this Order with notice of entry.

The foregoing constitutes the Decision and Order of this Court.

DATED: 8-22-13
BRONX, NEW YORK



HON. LAURA G. DOUGLAS,
J.S.C.