Callahan v Skanska USA Inc.
2014 NY Slip Op 33622(U)
December 19, 2014
Supreme Court, New York County
Docket Number: 100133/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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WILLIAM CALLAHAN, Index No. 100133/2011

Plaintiff

- against - DECISION AND ORDER

SKANSKA USA INC. and SKANSKA USA BUILDING INC.,

Defendants

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LUCY BILLINGS, J.S.C.:

Defendants maintain that plaintiff has failed to provide necessary disclosure and move for various remedies: to vacate the note of issue, 22 N.Y.C.R.R. § 202.21(e), or stay the trial until disclosure is complete, C.P.L.R. § 2201; to compel plaintiff's further deposition, C.P.L.R. § 3124; and to preclude evidence of plaintiff's damages if the necessary disclosure is not forthcoming. C.P.L.R. § 3126(2). Defendants already have deposed plaintiff four times between November 20, 2012, and December 13, 2013.

I. PLAINTIFF'S HEROIN USE AND CRIMINAL CONVICTIONS

Defendants are not entitled to inquire further regarding plaintiff's last use of heroin or his convictions for driving under the influence of drugs or alcohol (DUI), as defendants have presented no evidence suggesting that plaintiff previously failed to answer such inquiries truthfully. When asked when he last used heroin, he answered that he could not recall. When asked about his convictions for DUI, he disclosed one in 2008 and two

in 2011. A July 2010 arrest report that plaintiff was observed driving with heroin in his vehicle and ingesting the heroin when police approached, which precipitated a charge against him for tampering with evidence, does not indicate when he last used heroin, that he in fact recalled the occasion, or any conviction for DUI. Defendants were provided four opportunities to confront plaintiff with this documentary evidence and ask follow up questions probing his lack of recollection or whether the 2010 arrest led to a conviction and, insofar as such an inquiry may bear on his medical condition or his credibility, still may do so at trial. See, e.g., Pannone v. Silberstein, 40 A.D.3d 327, 328 (1st Dep't 2007); Martinez v. KSM Holding, 294 A.D.2d 111, 112 (1st Dep't 2002); Rosenberg v. Scaringi, 279 A.D.2d 389, 390 (1st Dep't 2001).

Defendants likewise are not entitled to inquire further regarding plaintiff's criminal convictions since his second deposition January 7, 2013. In this instance defendants rely on a criminal complaint merely charging plaintiff with possession of heroin, which resulted in a plea of guilty to loitering for the purpose of illegally using, possessing, or selling a controlled substance. N.J. Stat. Ann. § 2C:33-2.1. This conviction for such an offense does not suggest that plaintiff was untruthful when at his December 2013 deposition he answered defendants' inquiry regarding his 2013 convictions by admitting to a 2013 conviction for "Wandering . . . in the wrong place at the wrong time . . . . too long." Aff. of Matthew O. Sullivan Ex. D, at

44. Again, defendants already possess evidence of this conviction. Insofar as it may bear on plaintiff's medical condition or his credibility, defendants' remedy is to confront plaintiff with this evidence at trial. They need nothing further from him now on this subject.

II. A MOTOR VEHICLE COLLISION IN FEBRUARY 2011

At plaintiff's third deposition July 7, 2013, defendants asked plaintiff whether he had been involved in any motor vehicle collisions since the injury October 5, 2010, that he claims in this action, to which he answered in the negative. Defendants insist that only after that deposition and his further deposition December 13, 2013, they learned that he had been sued in another action arising out of an alleged motor vehicle collision February 21, 2011, where he was driving the vehicle that hit a vehicle occupied by the plaintiff in that action. Of course this lawsuit again is only allegations and not a definitive determination or even admissible evidence that his contrary testimony was false.

Plaintiff also points out that this single question regarding his involvement in any motor vehicle collisions followed questioning focussed specifically on whether he had been involved in "any job-related accidents" since October 5, 2010, to which he answered: "Not work." Id. at 505. Thus plaintiff may have understood the subsequent question regarding motor vehicle collisions as referring back to "job-related accidents." Subsequent questioning, moreover, focussed on motor vehicle collisions specifically in 2008, 2009, and 2010, but defendants

never asked specifically about 2011.

In sum, plaintiff may have answered truthfully to the question regarding any motor vehicle collisions because he was not in fact involved in a February 2011 collision or because he understood the question as referring to job-related collisions. Even if his answer was false, the inquiry is irrelevant unless the collision injured his right arm or hand, affecting the body part to which he claims injury in this action.

Although defendants have not shown that details of the impact caused by the February 2011 collision have been unavailable from court documents or New York State Department of Motor Vehicles public records, either before or since plaintiff's last deposition, the relevant inquiry regarding this incident is simple and brief. McKay v. Khabele, 46 A.D.3d 258, 258 (1st Dep't 2007). Therefore, to clear up any misunderstanding, lack of recollection, or untruthfulness, defendants, through three interrogatories or three deposition questions, may ask plaintiff:

(1) whether he was involved in a motor vehicle collision in February 2011; if so,

(2) whether he injured his right hand, right arm, or right shoulder in that collision; and, if so,

(3) where he received any treatment for his injuries from that collision.

If he answers in the negative to the first question, defendants may not inquire further. If he answers in the negative to the second question, defendants may not inquire further. If the

inquiry proceeds to the third question, and defendants have not already received authorizations for the records of the medical treatment providers identified, plaintiff shall exchange authorizations for the newly identified treatment providers' records. Rega v. Avon Prods., Inc., 49 A.D.3d 329, 330 (1st Dep't 2008); Velez v. Daar, 41 A.D.3d 164, 165-66 (1st Dep't 2007).

III. CONCLUSION

Since this disclosure will be limited, it does not necessitate vacating the note of issue and ought not to necessitate staying the trial. C.P.L.R. § 2201; 22 N.Y.C.R.R. § 202.21(e). Since plaintiff is to provide this disclosure and no further disclosure is warranted, no penalties are warranted unless plaintiff refuses to answer the questions permitted above. C.P.L.R. § 3126. Although defendants insist that plaintiff must fully disclose his relevant medical care, they fail to delineate what he has not disclosed, other than any medical care for any injuries from a February 2011 motor vehicle collision not already disclosed, as set forth above. Thus the court grants defendants' motion to the extent of compelling disclosure as set forth, C.P.L.R. § 3124, and otherwise denies their motion. C.P.L.R. §§ 2201, 3126; 22 N.Y.C.R.R. § 202.21(e).

DATED: December 19, 2014

LUCY BILLINGS, J.S.C.