

Robins v Procure Treatment Ctrs., Inc.
2018 NY Slip Op 31454(U)
July 2, 2018
Supreme Court, New York County
Docket Number: 805644/2015
Judge: George J. Silver
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. George J. Silver

PART 10

Justice

BARBARA ROBINS

Plaintiff

v.

PROCURE TREATMENT CENTERS, INC., PRINCETON PROCURE MANAGEMENT LLC, PROCURE PROTON THERAPY CENTER, PRINCETON RADIATION ONCOLOGY, OREN CAHLON, MD, HENRY K. TSAI, MD, EUGEN B HUG, MD, BRIAN H. CHON, MD, LISA "DOE" (JANE DOE #1), JOSE "DOE" (JOHN DOE #1), RAJ SHRIVASTAVA, MD, THE MOUNT SINAI HOSPITAL and IBI PROTON THERAPY, INC. a/k/a IBI PROTON EQUIPMENT

Defendants.

INDEX NO. 805644/2015

MOTION DATE _____

MOTION SEQ. NO. 008

MOTION CAL. NO. _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Plaintiff BARBARA ROBINS ("plaintiff") moves for an order directing a forensic accounting of defendants' PRINCETON PROCURE MANAGEMENT ("PPM"), RAJ SHRIVASTAVA, MD ("Dr. Shrivastava") and MOUNT SINAI HOSPITAL ("Mt. Sinai") (collectively, "defendants") financial records. In support of the application, plaintiff references Motion Sequence 007 (defendants' motion to dismiss), which contains the affidavits of Tom Hsin-Chieh Wang ("Wang"), a PPM employee, and Dr. Sr. Shrivastava. This court has denied Motion Sequence 007 under separate cover dated July 2, 2018 (see Decision and Order, Seq. 007). Wang alleges in his affidavit that PPM was paid by plaintiff's insurance carrier for Dr. Shrivastava's services. Plaintiff asserts that she has relied to her detriment on PPM's representation that her care was being co-managed by Dr. Shrivastava, who is affiliated with Mt. Sinai. Wang also claims in his affidavit that Dr. Shrivastava was copied on "various external treatment notes" pertaining to plaintiff, none of which have been provided in discovery. Wang further claims in his affidavit that "[PPM] did not remit any payment to NYPC-NJ, Dr. Shrivastava, or Mt. Sinai Hospital for Ms. Robins treatment." In his affidavit, Dr. Shrivastava claims: ". . . I was never compensated for any of Ms. Robins treatment at [PPM] . . ." Nevertheless, plaintiff states that defendants self-serving declarations are belied by the evidence before the court, which includes Wang's aforementioned statement that Dr. Shrivastava was copied on treatment notes pertaining to plaintiff. Indeed, plaintiff alleges that Wang's assertion requires that plaintiff be permitted to conduct a forensic accounting into what PPM did with plaintiff's money. Such evidence, plaintiff submits, may shed light upon defendants' relative involvement in

plaintiff's case, especially where some defendants (Dr. Shrivastava and Mt. Sinai) are alleging no involvement whatsoever. In plaintiff's estimation, evidence that Dr. Shrivastava, for instance, was paid for the services rendered to plaintiff would tend to discredit his claims that he had no involvement at all.

In opposition, defendants' seek a protective order pursuant to CPLR §3103(a) with respect to plaintiff's request for a forensic accounting of defendants' financial records. Defendants contend that plaintiff's request is overbroad and devoid of a legal basis. Indeed, defendants contend that plaintiff's request lacks a legal basis because her pleadings are devoid of any allegations with respect to improper billing of radiation therapy services. Defendants further contend that plaintiff's request is overbroad insofar as plaintiff's counsel fails to define the scope of what a "forensic accounting" will entail and how many years of billing records will be available to review. Defendants further contend that plaintiff does not set forth with any specificity what records are necessary to her inquiry. As such, defendants submit that plaintiff's request is unduly burdensome.

In reply, plaintiff argues that defendants have misapprehended her motion. To be sure, plaintiff avers that the forensic accounting does not pertain to the heart of plaintiff's allegations of negligence, but is instead to establish that Dr. Shrivastava, as well as Mt. Sinai, were in fact involved in plaintiff's care at PPM. Notably, plaintiff highlights that defendants are not denying that Dr. Shrivastava's name is on PPM's billing records. In plaintiff's view, those billing records are for the very services that caused her blindness. As such, plaintiff submits that Dr. Shrivastava cannot shield himself from providing discovery that would establish his involvement (or lack thereof) in plaintiff's treatment, and at the same time use plaintiff's lack of proof as a basis to dismiss this case.

It is settled that the scope of disclosure is "open and far-reaching" (*Kavanagh v. Ogden Allied Maintenance, Corp.*, 92 NY2d 952, 954 [4th Dept. 1998]; *Friel v. Papa*, 56 AD3d 607 [2d Dept. 2008]) and extends to matter "material and necessary" and "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Allen v Crowell-CollierPub. Co.*, 21 NY2d 403, 406 [1968]; see *Andon ex rel Andon v. 302-304 Mott Street Associates*, 94 NY2d 740, 746 [2000]).

Nevertheless, unfettered or "unlimited disclosure is not required" (*Smith v. Moore*, 31 AD3d 628 [2d Dept. 2006]). Nor will "carte blanche demands be honored" (*European American Bank v. Competition Motors, Ltd.*, 186 AD2d 784, 785 [2d Dept. 1992] see *Vyas v. Campbell*, 4 AD3d 418, 418 [2d Dept. 2004]), particularly where the demands at issue would attach undue attention" to collateral matters (*Blittner v. Berg and Dorf*, 138 AD2d 439, 440-441[2d Dept. 1988]), or where they are overly broad, unduly burdensome, or lacking in specificity (see *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 AD3d 408 [2d Dept. 2009]).

Moreover, "[i]t is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence" (*Beckles v. Kingsbrook Jewish Medical Center*, 36 AD3d 733 [2d Dept.

2007], quoting from, *Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept. 1989]; *Boone v. Bender*, 11 AD3d 496 [2d Dept. 2004]; *Vyas v. Campbell*, 4 AD3d 417, 418 [2d Dept. 2004]). “Broad, unparticularized document demands” (*M. Farbman & Sons, Inc. v. New York City Health and Hospitals Corp.*, 62 NY2d 75, 80 [1984]), and those employing categorical or unrefined introductory terminology such “all,” “any and all” or “each and every” are generally disfavored (e.g., *Haroian v Nusbaum*, 84 AD2d 532, 533 [2d Dept. 1981] see also, *MacKinnon v. MacKinnon*, 245 AD2d 690, 691 [3d Dept. 1997] see also, *Benzenberg v. Telecom Plus of Upstate New York, Inc.*, 119 AD2d 717 [2d Dept. 1987]).

Notably, “[t]he burden of serving a proper demand is upon counsel”, and that Courts are not required to prune a defective demand or request, even though that it might relate to potentially discoverable material (see, *Bell v. Cobble Hill Health Center, Inc.*, 22 AD3d 620 [2d Dept. 2005]).

The court possesses broad discretion to limit discovery in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice, and also “to determine what is ‘material and necessary’ as that phrase is used in CPLR §3101(a)” (*Auerbach v. Klein*, 30 AD3d 451 [2d Dept. 2006]). CPLR §3103 is designed to stay particularized, clearly-identified discovery that is in dispute. As a result, the burden of fully establishing the right to protection under this provision is on the party asserting it (*Spectrum Systems Intl. Corp. v. Chemical Bank*, 78 NY2d 371 [1991]). “The proponent of such a motion must make an appropriate factual showing to be entitled to such relief” (*Willis v. Cassia*, 255 AD2d 800, 801 [3rd Dept. 1998]).

Here, plaintiff has sufficiently shown that her possession of defendants’ billing records is likely to shed light upon material and necessary information related to extent to which Dr. Shrivastava may have been involved in plaintiff’s care. Indeed, evidence supporting plaintiff’s request for disclosure is contained in the records annexed to plaintiff’s moving papers, which directly link Dr. Shrivastava to “management” of plaintiff’s radiation treatment. The substantial sum billed for Dr. Shrivastava’s services, \$217,061.00, and PPM’s admission in the Wang affidavit that PPM did indeed put him on the bills and copied him on many notes related to plaintiff’s care, directly contradict Dr. Shrivastava’s statements that he was not involved in plaintiff’s care. It is therefore axiomatic that plaintiff should be afforded the opportunity to review documents related to Dr. Shrivastava’s billing and depose Dr. Shrivastava and others on the extent to which Dr. Shrivastava may have been involved in plaintiff’s care.

Defendants’ assertions that the information sought by plaintiff is unduly burdensome is belied by the fact that plaintiff is narrowly seeking billing records from March through July 2013.

As plaintiff’s application is being granted, defendants’ cross-motion seeking a protective order is necessarily denied. Indeed, defendants’ have failed to make an adequate factual showing beyond conclusory assertions for why the billing records sought are irrelevant. Defendants have similarly failed to show that the records

plaintiff is seeking would be available through a less restrictive alternative.

Accordingly, it is hereby

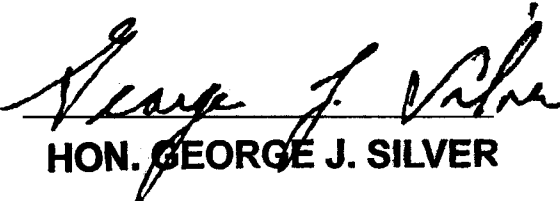
ORDERED that plaintiff's motion is GRANTED to the extent that defendants are directed to respond to plaintiff's outstanding discovery demands and permit plaintiff to perform a forensic accounting in the form specified in plaintiff's Notice for Discovery and Inspection and to Preserve Evidence dated April 27, 2018 and annexed as Exhibit F to plaintiff's moving papers within 30 days of the date of this order; and it is further

ORDERED that defendants' cross-motion seeking a protective order, is denied; and it is further

ORDERED that the parties are directed to appear for a conference before the court on Tuesday August 21, 2018 at 9:30 AM at 111 Centre Street, Room 1227.

The foregoing constitutes the decision and order of the court.

Dated: July 2, 2018
New York, New York


HON. GEORGE J. SILVER

1. Check one: Case Disposed Non-Final Disposition
2. Check as Appropriate: Motion is: Granted Denied Granted in Part Other