

Gottlieb v City of New York

2018 NY Slip Op 32365(U)

September 21, 2018

Supreme Court, New York County

Docket Number: 805129/2015

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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ADRIAN GOTTLIEB, as the Executor of the Estate
of MARTIN GOTTLIEB, Deceased, and ADRIAN
GOTTLIEB, Individually,

Index No.
805129/2015

Plaintiffs,

Decision and
Order

THE CITY OF NEW YORK,
NEW YORK CITY POLICE DEPARTMENT
(N.Y.P.D)/911 EMERGENCY MEDICAL
SERVICES A/K/A EMS/NEW YORK CITY
FIRE DEPARTMENT (N.Y.F.D),
SENIOR CARE EMERGENCY
MEDICAL SERVICES, NEW YORK
ROAD RUNNERS, INC., MOUNT SINAI
HEALTH SYSTEMS, INC. d/b/a MOUNT SINAI,
ST. LUKE'S d/b/a ST. LUKE'S HOSPITAL, and
DIAMOND FOODS, INC., d/b/a EMERALD NUTS,

Mot. Seq. 6

Defendants

-----X
HON. EILEEN A. RAKOWER, J.S.C.

The complaint alleges claims of medical malpractice and negligence in the medical care that Defendants provided to plaintiff-decedent Martin Gottlieb ("Martin" or "decedent") from December 31, 2013 through January 1, 2014. Martin suffered a cardiac event during the annual Midnight Run in Central Park on December 31, 2013. As the result of a 911 call, Senior Care Emergency Medical Services, Inc. ("Senior Care"), dispatched a paramedic unit which arrived along with members of the New York City Fire Department ("NYFD"). Martin was brought to St. Luke's Emergency Department.

Plaintiffs have discontinued the claims against all defendants except Senior Care. Senior Care maintains cross claims against St. Luke's and New York Road Runners, Inc. ("NYRR") for indemnification.

Plaintiffs filed the Note of Issue on April 30, 2018. On June 25, 2018, the Court granted St. Luke's and NYRR an extension of time to move for summary

judgment until August 10, 2018. St. Luke's and New York Road Runners moved for summary judgment on August 10, 2018.

Pending Motion

Senior Care moves for an Order to (1) strike the note of issue and remove this matter from the trial calendar; and/or (2) extend its time to move for summary judgment for 120 days; and (3) preclude Plaintiffs from presenting evidence as demanded by Senior Care in demands dated January 16, 2018, January 30, 2018, and March 6, 2018. In the alternative, Senior Care seeks an Order to compel Plaintiffs to provide full and complete responses to Senior Care's demands dated January 16, 2018, January 30, 2018 and March 6, 2018; and to compel St. Luke's to produce Dr. Patrick Corey ("Corey") for a deposition as requested in its April 10, 2018 letter.

Senior Care's Motion as it relates to Plaintiffs

Senior Care contends that Plaintiffs owe outstanding discovery, which includes information concerning decedent's properties and assets, tax returns and records from the Internal Revenue Service.

Plaintiffs oppose Senior Care's motion, asserting that all discovery has been completed, and there are no outstanding discovery issues that would warrant striking the note of issue or granting Senior Care's request for time to file a motion for summary judgment. Plaintiffs state that they have responded to all discovery requests and Court Orders. To the extent that Senior Care contends that it has not received certain tax returns, Plaintiffs show that they have produced duly executed authorizations for tax returns on several occasions. Plaintiffs state that on June 14, 2018, they produced "all tax returns in [their] possession," "including the complete tax returns and filings inclusive of schedules and worksheets for the plaintiff's-decedent Martin Gottlieb (2009 to 2014), his Estate's tax filing (2014), as well as for plaintiff Adrian Gottlieb (2009 to 2013)." Plaintiffs further state, "With regard to the claimed financial support from plaintiff's-decedent's residential property taxes, that information is contained on the tax returns and is publicly available." Plaintiffs further state, "In addition, Plaintiff Adrian Gottlieb has already testified at length regarding his loss of financial support during his deposition." Lastly, Plaintiffs state, "it must be noted that Defendant's requests relating to asset-searching such as his inquiry into the plaintiff-decedent's automobiles or other personal property do not relate to Plaintiffs' claims, and are therefore outside the scope of discovery."

Senior Care provides no basis for vacating the Note of Issue. Plaintiffs have complied with their discovery obligations. Furthermore, to the extent that the alleged outstanding discovery relates to the issue of damages, Senior Care has not demonstrated why an extension of time to file a summary judgment motion is needed.

Senior Care's Motion as it Relates to St. Luke's

By letter dated April 10, 2018, Senior Care designated Corey as a witness to appear for a deposition on St. Luke's behalf. The letter further stated, "If the witness is no longer employed by or under the control of St. Luke's Hospital, we demand the last known contact information for same. Further, should this witness no longer employed by or under the control of St. Luke's Hospital, we reserve our right to designate another appropriate individual." St Luke's states that in response to this letter, it advised Senior Care in May 2018 that Corey was no longer employed by St. Luke's and provided his last known address. In that same letter, St. Luke's stated that Dr. Matthew Morrison ("Morrison"), another doctor who had treated decedent, was no longer employed by St. Luke's. As such, St. Luke's contends that the portion of the motion which seeks to compel Corey's deposition is moot.

In reply, Senior Care "requests that the Court order St. Luke's to provide the last known address of Dr. Matthew Morrison and any other St. Luke's staff who treated the decedent and who are no longer employees or, if still employed, produce the employee for a deposition."

As for Morrison's last known address, it has now been provided to Senior Care. While Senior Care has been provided with the last known address for Corey and Morrison, there is no indication that they have served subpoenas on them to take their depositions. Senior Care's request, three months after the Note of Issue has been filed, for St. Luke's to identify the last known address of "any other St. Luke's staff" that treated Martin and to produce them for deposition is untimely.

Wherefore it is hereby

ORDERED that defendant Senior Care Emergency Medical Services, Inc.'s motion is denied in its entirety.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: September 21, 2018



EILEEN A. RAKOWER, J.S.C.