

Ladson v 1234 Fulton Ave. Corp.

2018 NY Slip Op 33976(U)

November 26, 2018

Supreme Court, Bronx County

Docket Number: 22791/2014

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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SABRINA LADSON, as the Administrator of the
Estate of NATHANIEL LADSON, deceased,

Index No. 22791/2014

Plaintiff,

DECISION/ORDER

-against-

1234 FULTON AVENUE CORP.,

Present:
Hon. Laura G. Douglas
J.S.C.

Defendant.

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Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to strike plaintiff's complaint and related relief:

<u>Papers</u>	<u>Numbered</u>
Defendant's Notice of Motion, Good Faith Affirmation of Ian B. Forman, Esq. dated October 4, 2018, Affirmation of Ian B. Forman, Esq. dated October 4, 2018 in Support of Motion, and Exhibits ("A" through "AA").....	1
Affirmation of Jeffrey B. Manca, Esq. dated November 9, 2018 in Opposition to Motion and Exhibits ("A" through "H").....	2
Reply Affirmation of Ian B. Forman, Esq. dated November 13, 2018 and Exhibits ("A" through "F").....	3

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

The defendant seeks an order dismissing the plaintiff's complaint as a penalty for her purported failure to furnish certain court-ordered disclosure or, alternatively, precluding the plaintiff from offering any evidence at trial or, alternatively, compelling the plaintiff to furnish said disclosure, and adjourning depositions until such disclosure is provided. The motion is granted solely as ordered below and is denied in all other respects.

The plaintiff seeks monetary damages for personal injuries allegedly sustained by the plaintiff's decedent as a result of a slip and fall accident on October 21, 2011 at a building owned and/or operated by the defendant. The plaintiff's decedent died on December 7, 2014. The discovery items at issue are various health treatment records of the plaintiff's decedent.

The plaintiff contends that she has furnished many authorizations to obtain such records and has attached photocopies of same as exhibits to her opposition papers. The defendant contends that it has not received original authorizations as required by the health care providers. In order to expedite this litigation, the plaintiff shall furnish original authorizations by mail to defendant's counsel's New York City office duplicating the photocopies of authorizations filed electronically in this Court as exhibits to the plaintiff's opposition papers.

The defendant contends that no response has been provided to its demand for the autopsy report sought in the defendant's discovery notice dated February 4, 2016. The plaintiff does not address this item in her opposition papers. Therefore, the plaintiff shall provide the autopsy report.

The defendant contends that the plaintiff has inadequately responded to the defendant's discovery notice dated October 7, 2016 regarding claims for psychological damages. These responses have been the subject of three court orders. In response, the plaintiff, provided authorizations to obtain the plaintiff's decedent's records from the VA Medical Center and Bronx-Lebanon Hospital by letter dated November 6, 2018. The plaintiff further responded that as the administrator of the estate of the deceased plaintiff, she is "not in possession of any more information regarding plaintiff psychological and/or psychiatric treatment". The defendant has not stated whether the records to be released by these authorizations fail to address this treatment. The defendant may seek further relief in this regard once it has obtained and reviewed the aforesaid records.

The defendant contends that the plaintiff has inadequately responded to the defendant's discovery notice dated October 10, 2014 seeking records regarding the deceased plaintiff's treatment for drug and/or alcohol dependence or abuse. These responses have been the subject of three court orders. In response, the plaintiff provided authorizations to obtain certain of the plaintiff's decedent's records (see Manca Affirmation, Exhibit "C"). The defendant has not stated whether the records to be released by this authorization fails to address this treatment. The defendant may seek further relief in this regard once it has obtained and reviewed the aforesaid records.

The defendant contends that the plaintiff has inadequately responded to the defendant's discovery notice dated October 10, 2014 seeking records regarding the plaintiff's decedent's prior accidents and records regarding the deceased plaintiff's treatment for a seizure disorder prior to the underlying occurrence. These responses have been the subject of three court orders. In a letter dated November 5, 2018, the plaintiff responded that as the administrator of the estate of the deceased plaintiff, she is "not in possession of any information regarding any prior falls and/or accident which

occurred prior to October 21, 2011” and is “not in possession of any information regarding plaintiff’s treatment for seizures disorder prior to the occurrence”. The plaintiff’s decedent died on December 7, 2014. Therefore, the plaintiff could have timely provided the items requested in these 2014 discovery notices. The defendant should not bear the burden of the plaintiff’s failure to comply while alive. The burden upon the administrator is not simply to furnish what is in her possession, but to make the necessary arrangements to produce those items within her control (*see* CPLR Rule 3120 (1)(I) and *Suto v. Folkes Heating, Cooling & Burner Service, Inc.*, 15 AD3d 469 [2nd Dept 2005]).

Finally, the defendant contends that the plaintiff has inadequately responded to the defendant’s demand for *Arons* authorizations dated September 6, 2017. The plaintiff argues that an *Arons* authorization for the EMS workers listed on the corresponding ambulance call report were previously provided. The defendant denies receipt of same. In the interest of moving this case forward expeditiously, the plaintiff shall provide a fresh original *Arons* authorization in this regard.

Since the defendant will have a fair number of records available through the authorizations provided, depositions are to proceed without delay. The defendant may seek further deposition(s) to the extent that it demonstrates that certain meaningful records were not available at the time of the deposition(s) conducted.

Accordingly, it is hereby

ORDERED that the plaintiff shall furnish original authorizations by mail to defendant’s counsel’s New York City office duplicating the photocopies of authorizations filed electronically in this Court as exhibits to the plaintiff’s opposition papers no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall provide a copy of the autopsy report for the plaintiff’s decedent no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall be precluded from offering any evidence regarding damages unless she provides duly-executed original authorization(s) for the release of the plaintiff’s decedent’s records regarding any prior accidents or an affidavit detailing the efforts made to obtain such records no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall be precluded from offering any evidence regarding damages unless she provides duly-executed original authorizations for the release of the plaintiff’s

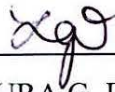
decendent's records regarding his treatment for a seizure disorder prior to the underlying occurrence or an affidavit detailing the efforts made to obtain such records no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall provide a fresh original *Arons* authorization for the EMS workers listed on the corresponding ambulance call report no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that depositions shall take place no later than January 21, 2019 upon penalty of preclusion and/or waiver on the offending party.

This constitutes the Decision and Order of this Court.

Bronx, New York
November 26, 2018



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