

Galecke v Marchakitus
2020 NY Slip Op 31788(U)
June 9, 2020
Supreme Court, New York County
Docket Number: 153506/2016
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

TRICIA GALECKE,

Plaintiff,

- v -

SCOTT MARCHAKITUS, JANE DOE,

Defendant.

-----X

INDEX NO. 153506/2016
MOTION DATE N/A
MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for ORDER OF PROTECTION.

In this personal injury action, plaintiff Tricia Leigh Galecke ("Galecke" or "plaintiff") moves, by order to show cause, pursuant to CPLR 3103 (a), for a protective order prohibiting defendant Scott Marchakitus ("Marchakitus") from attending her deposition (Docs. 61-70). Marchakitus opposes the application (Doc. 71). After a review of the parties' contentions, as well as the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

This action stems from allegations that, on April 28, 2015, Marchakitus assaulted Galecke at the premises owned and operated by defendant MARRIOT INTERNATIONAL, INC. d/b/a MARRIOT MARQUIS NEW YORK, located at 1535 Broadway, New York, NY (Doc. 62 ¶ 3). As relevant here, in a status conference order filed September 12, 2019, this Court directed Galecke's deposition to be completed on October 23, 2019 (Doc. 58). This deposition was later rescheduled for February 27, 2020 (Doc. 59). When Marchakitus informed plaintiff that he would

be attending her deposition, Galecke objected and, on December 26, 2019, filed an order to show cause seeking a protective order to prevent him from doing so (Doc. 70).

Galecke requests that this Court preclude Marchakitus from attending her deposition on the grounds that she suffers from post-traumatic stress disorder ("PTSD") as a direct result of the assault claimed in this action and that Marchakitus' physical presence at her deposition will negatively affect her physically and psychologically (Doc. 62 ¶ 16).

In opposition to the motion, Marchakitus argues, *inter alia*, that Galecke has failed to demonstrate an unusual circumstance warranting his exclusion from her deposition (Doc. 71 ¶ 8-10). However, should this Court be inclined to grant the motion, Marchakitus requests that he be permitted to participate in Galecke's deposition by live audio/video and have an opportunity to confer with counsel as often as necessary (Doc. 71 ¶ 12).

LEGAL CONCLUSIONS:

A party in a civil action has a right to be present at an examination before trial (*see* CPLR 3113 [c]; *Perez v Time Moving & Storage*, 28 AD3d 326, 328 [1st Dept 2006], *lv dismissed* 7 NY3d 862, 857 [2006]). However, this right is not absolute, and a court may, in its discretion and under appropriate circumstances, exclude a party from a deposition (*see* CPLR 3103 [a]; *Jones v Maples*, 257 AD2d 53, 56-57[1st Dept 1999]; *Troutman v Washburn*, 197 AD2d 876, 876 [4th Dept 1993]).

This Court grants Galecke's motion. Galecke submits, *inter alia*, a letter from Vatsal G. Thakkar, M.D. ("Dr. Thakkar"), her treating physician, who opined that Galecke's PTSD may be exacerbated by the presence of her alleged assailant at her deposition (Doc. 68). Dr. Thakkar stated that, under these circumstances, acute symptoms of PTSD can result in extreme panic,

dissociation, and extreme difficulty with concentration (Doc. 68). Given this potentially negative impact, this Court, in its discretion, directs Marchakitus to participate in plaintiff's deposition by video conferencing. Marchakitus will have ample opportunity to confer with his own counsel during said deposition and, thus, this Court finds no harm in excluding him from Galecke's deposition (*see* CPLR 3103 [a]; *Troutman v Washburn*, 197 AD2d at 876; *Jones v Maples*, 257 AD2d at 56; *Perez v Time Moving & Stor.*, 28 AD3d 329-330; *Rossi v Johnston*, 2019 NY Slip Op 33254 [U], 2019 NY Misc LEXIS 5888, *4 [Sup Ct, NY County 2019]).

ORDERED that plaintiff TRICIA LEIGH GALECKE's motion for a protective order pursuant to CPLR 3103 (a), prohibiting plaintiff from being physically present at her deposition is granted; and it is further

ORDERED that defendant SCOTT MARCHAKITUS and his attorney may participate in plaintiff's deposition by video, and defendant may confer with his attorney during said deposition; and it is further


ORDERED that TRICIA LEIGH GALECKE's deposition be conducted within 30 days after service of this order with notice of entry; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order, with notice of entry, upon defendant within 30 days of entry; and it is further

ORDERED that, before June 25, 2020, the parties are to submit a stipulation as directed by this Court's June 4, 2020 notice; and it is further

ORDERED that this constitutes the decision and order of the Court.

6/9/2020
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE