

Schoolfield v Services for the Underserved, Inc.

2020 NY Slip Op 32484(U)

June 29, 2020

Supreme Court, Bronx County

Docket Number: 27123/2015

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 11 - DCM

Index No. 27123/2015

MARK E. SCHOOLFIELD,

Plaintiff,

-against-

SERVICES FOR THE UNDERSERVED, INC.,
MACOMBS ROAD HOUSING DEVELOPMENT
FUND CORPORATION, MACOMBS ROAD HOUSING, L.P.,
MACOMBS, LIMITED PARTNERSHIP,
JOHN OR JANE DOES, 1-5,

Defendants.

DECISION/ORDER

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



SERVICES FOR THE UNDERSERVED, INC.,
MACOMBS ROAD HOUSING DEVELOPMENT
FUND CORPORATION, MACOMBS ROAD HOUSING, L.P.,

Third-Party Plaintiffs,

-against-

FJC SECURITY SERVICES, INC.,

Third-Party Defendant.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to compel and related relief and cross-motion for a protective order:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause, Good Faith Affirmation of Nicholas Lewis, Esq. dated October 1, 2019, Affirmation of Nicholas E. Lewis, Esq. dated October 1, 2019 in Support of Motion, and Exhibits (“A” through “K”).....	1
Notice of Cross-Motion by Defendants/Third-Party Plaintiffs, Affirmation of Kevin J. O’Donnell, Esq. dated October 15, 2019 in Opposition to Motion and in Support of Cross-Motion, and Exhibits (“A” through “M”).....	2
Affirmation of Nicholas E. Lewis, Esq. dated November 1, 2019 in Reply and in Opposition to Cross-Motion.....	3

This motion and cross-motion are consolidated for purposes of Decision/Order and, upon the foregoing papers and after due deliberation, the Decision/Order on this motion and cross-motion is as follows:

The plaintiff seeks an order pursuant to CPLR Rule 3124 and § 3101(a) compelling the defendants to provide an unredacted copy of the minutes from the review of the underlying incident conducted by defendant Services for the Underserved, Inc. (“SUS”) or providing these minutes to the Court to conduct an *in camera* review to determine whether they are discoverable in this action, compelling the defendants to provide access to the plaintiff’s former apartment and the facility at Macombs Road, and extending the deadline to file a note of issue pursuant to CPLR § 2004. The defendants cross-move for a protective order pursuant to CPLR § 3103(a) shielding these minutes from disclosure. At this time, the motion is granted solely as ordered below and denied in all other respects. The cross-motion is denied.

The plaintiff seeks monetary damages for personal injuries allegedly sustained following a fire in an apartment/room secured for him by the defendants as supportive living quarters for persons with disabilities. The plaintiff alleges that the defendants’ negligence caused the fire and that they failed to properly monitor the premises causing an inordinate delay in discovering the injured plaintiff and rendering assistance. The defendants claim that the plaintiff set himself on fire inside the apartment.

SUS reviewed this incident through its incident review committee. Following the deposition of Denise Gibson-Phipps on November 9, 2018, the plaintiff served a discovery notice dated December 4, 2018 requesting, among other items, a copy of these minutes. The defendants furnished a heavily redacted copy of these minutes without an accompanying privilege log.

The defendants contend that these minutes are shielded from disclosure by a quality assurance privilege under Education Law § 6527(3), which provides as follows:

“Neither the proceedings nor the records relating to performance of a medical or a quality assurance review function . . . shall be subject to disclosure under Article 31 of the CPLR except as hereinafter provided or as provided by any other provision of law.”

In support, the defendants submit an affidavit dated October 15, 2019 from Nakia Blenman (“Blenman”), Vice President of Compliance and Quality Assurance for SUS/Macombs. Blenman avers that the subject minutes were generated solely for the quality assurance review function under Education Law § 6527(3). In accordance with regulations from the NYS Office of Mental Health, SUS appoints a standing committee to assure that all incidents and allegations of abuse are reviewed and addressed.

This procedure was followed in this case and minutes of those meetings were recorded.

The plaintiff contends that the defendants have failed to establish that SUS is a facility which is covered by Education Law § 6527(3), that SUS' review committee participates in such a program, or that SUS adhered to the regulations and reported this incident to New York State. In order to make this determination, the Court will conduct an *in camera* review of these minutes, as well as any supporting documents that are required to provide appropriate context as to the conduct and handling of the review and its findings.

The defendants have also refused to agree to an inspection of the premises by the plaintiff. The defendants argue that the apartment has been cleaned and repainted prior to the new tenant's occupancy. In addition, the defendants argue that the plaintiff waited until recently to request an inspection of the premises, despite the fact that this action was commenced five years ago and multiple discovery scheduling conferences have been held without any mention of such an inspection. Moreover, the plaintiff asked to return to the premises to collect his belongings and the defendants accommodated that visit on February 27, 2018 (during the pendency of this action), at which time the plaintiff took photographs and video footage of the apartment, which was apparently in substantially the same condition as it was shortly after the fire. The plaintiff was put on notice several times in 2018 that a judgment of possession had been issued in the defendants' favor and that a new tenant would be occupying the apartment.

Accordingly, the branch of the motion seeking an inspection of the subject premises is denied. The plaintiff had ample opportunity to conduct a timely inspection. The plaintiff has failed to submit any formal request for such an inspection prior to September 27, 2019, some four years after this action was commenced and some five years after the fire. The plaintiff was able to return to the apartment during the pendency of this action. Other than a conclusory allegation that "the room at issue, and facility in general, contain relevant information", no explanation as to why such an inspection at this time is material and necessary to prosecute these claims (*see* Lewis Reply Affirmation, paragraph "27").

The branch of the motion seeking to extend the deadline to file a note of issue is granted without opposition.

Accordingly, it is hereby


ORDERED that no later than 30 days following service of a copy of this Order with notice of entry the defendants shall submit complete redacted and unredacted copies of the incident review committee minutes and supporting material, along with a copy of this Order, in a sealed envelope to the

Clerk of Part 6 located in Room 811 or Room 217 or, if in-person business is not yet available due to the present public health and safety guidelines, then by mail to my attention at 851 Grand Concourse, Room 6M-15, Bronx, New York 10451; and it is further

ORDERED that the deadline to file a note of issue is extended to September 30, 2020;

The foregoing constitutes the Decision/Order of this Court.

DATED: June 29, 2020
Bronx, New York



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