

Bynes v New York City Health & Hosps. Corp.

2020 NY Slip Op 34422(U)

September 17, 2020

Supreme Court, Bronx County

Docket Number: 29491/2018E

Judge: George J. Silver

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — BRONX COUNTY
PRESENT: GEORGE J. SILVER
Justice

JAMAR C. BYNES, as Administrator of the Estate of
MARLENE HALL, deceased,

Index No. 29491/2018E

- v -

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION

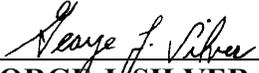
Hon. GEORGE J. SILVER
Justice Supreme Court

The following papers numbered 1 to 1 were read on this motion (Seq. No. **001**) to **COMPEL** (*see* CPLR §2219 [a]):

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order of the court.

Dated: September 17, 2020

Hon. 
GEORGE J. SILVER, J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----X

**JAMAR C. BYNES, as Administrator of the Estate of
MARLENE HALL, deceased,**

Index No. 29491/2018E

Plaintiff

-vs-

**NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION**

Defendant

-----X

HON. GEORGE J. SILVER:

This is an action for medical malpractice that occurred at the Jacobi Medical Center, one of defendant New York City Health and Hospitals Corporation’s facilities, between October 26, 2016 and May 28, 2017. Plaintiff JAMAR C. BYNES (“plaintiff”), as administrator of the estate of MARLENE HALL (“decedent”), alleges that defendant failed to: 1) detect certain blood clots; 2) heed the results of a venous Doppler test; 3) perform a hysterectomy to control uterine bleeding; 4) timely treat decedent for an acute and chronic embolism; and 5) treat uterine adenomyoma. Plaintiff alleges that defendant’s alleged malpractice resulted in decedent’s death.

With the instant motion, plaintiff seeks to compel the remote, virtual depositions of designated witnesses from Jacobi Medical Center. In seeking that relief, plaintiff argues that discovery must continue, without interruption, notwithstanding the challenges posed by the COVID-19 pandemic. Plaintiff also argues that requiring in-person depositions would create an undue hardship, and underscores that both the CPLR and case law from courts across New York endorse the utilization of virtual depositions.

Defendant submitted no opposition to the instant application.

CPLR §3103(a) dictates that a court may “regulat[e] the use of any disclosure device” to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” Whether or not a party may testify virtually by video “is left to the trial court’s discretion” (*Am. Bank Note Corp v. Daniele*, 81 AD3d 500, 501 [1st Dept 2011]).. If a party seeks to conduct a deposition in a method other than in person, the party is required to demonstrate that appearing in person would create “undue hardship”(*LaRusso v. Brookstone, Inc.*, 52 AD3d 576,577 [2d Dept 2008]). Indeed, it is also the case that courts across the state have compelled parties to sit for virtual depositions (*see Johnson v. Time Warner Cable N.Y. City, LLC* [Kalish, J.][May 28, 2020][Sup. Ct. New York Cnty Index No.: 155531/2017] [“to delay discovery until a vaccine is available or the pandemic has otherwise abated would be unacceptable”]; *Arner v. Derf Cab Corp.* [Silvera, J.][May 14, 2020][Sup. Ct. New York Cnty Index No.: 151731/19] [defendants ordered to appear for virtual depositions]; *Stern as Executrix of Stern v. New York*

Presbyterian Hospital [Edwards, J.][June 1, 2020][Sup. Ct. Kings Cnty Index No.: 510384/2018][virtual depositions ordered in a medical malpractice case]).

It is undeniable that forcing a party to appear for an in-person deposition would create an undue hardship considering the circumstances surrounding the ongoing pandemic. Indeed, the present pandemic presents a perfect example of when virtual depositions should be utilized. The question then becomes whether forcing a defendant to appear for virtual depositions is, in and of itself, also an undue hardship in light of the general preference to have attorneys present with their clients during depositions.

Here, the court finds that it would not be an undue hardship for defendant to have plaintiff's designated witnesses appear for virtual depositions. Defendant submitted no opposition to the present application, and therefore advances no argument that it would be burdensome for plaintiff's designated witnesses to appear for virtual depositions. To be sure, there is no evidence that any of the designated Jacobi Medical Center staff are directly treating COVID-19 patients. Conversely, to delay the depositions in this matter in perpetuity would invariably prejudice plaintiff, and hinder the prompt resolution of this matter. Faced with that disagreeable reality, discovery must proceed.

Based on the foregoing, it is hereby

ORDERED that plaintiff's application is granted and the remaining depositions in this matter are to proceed virtually; and it is further

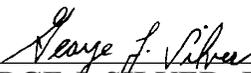
ORDERED that plaintiff serve a copy of this decision and order upon defendant, with notice of entry, within thirty (30) days of its issuance; and it is further

ORDERED that the parties are directed to meet and confer and outline dates for the remaining depositions within forty-five (45) days of service of this decision and order; and it is further

ORDERED that the parties are to appear for a virtual status conference on Thursday, October 29, 2020 at 11:00 AM.

This constitutes the decision and order of the court.

Dated: September 17, 2020



GEORGE J. SILVER, J.S.C.