

Selvaggio v City of New York

2021 NY Slip Op 33909(U)

September 30, 2021

Supreme Court, Richmond County

Docket Number: Index No. 100039/2018

Judge: Thomas P. Aliotta

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C2

-----X
CHRISTINA SELVAGGIO,

HON. THOMAS P. ALIOTTA

Plaintiff,

DECISION & ORDER

- against -

Index #100039/2018
Mot. Seq. 012, 013 & 014

THE CITY OF NEW YORK, DOE COURT
HOMEOWNER’S ASSOCIATION, a.k.a., DOE
COURT HOMEOWNER’S ASSOCIATION, LTD.,
UNITED STATE LIABILITY INSURANCE COMPANY,
DAWNING REAL ESTATE INCORPORATED, JOAN
and ROBERT GALLO, YONA and YONI MATON, a.k.a.,
AVISHY SHAER and EILEEN MATON, a.k.a., AVISHY
SHAER and EILEEN MATON,

Defendants.

-----X
Recitation of the papers as required by 2219(a) of the following papers numbered “1”
through “7” were marked fully submitted on July 14, 2021.

**Papers
Numbered**

MS012 Plaintiff’s Notice of Motion pursuant to CPLR §2304,
§3103(a), §3120(4), §3122, Judiciary Law §487 and Judiciary
Law §431, Affidavit and Supporting Papers (NYSCEF 287-288)1, 2

MS013 Plaintiff’s Notice of Motion pursuant to CPLR§2304,
§3103(a), §3120(4), §3122, Judiciary Law §487 and Judiciary
Law §431, Affidavit and Supporting Papers (NYSCEF 289-309)3, 4

MS014 Defendants, Doe Court Homeowner’s Association,
Dawning Real Estate, and Yona and Yoni Maton, Notice of
Cross-Motion, Affirmation of David Montag, Esq. and
Affidavit of Alyse Velger, Esq., in Support and in Opposition
to Plaintiff’s Motion, and Supporting Papers for an order
pursuant to The Rules of the Chief Administrative Judge
Section 130-1.1 for costs, expenses and attorney’s fees incurred
in opposing Motion Sequence 013 (NYSCEF 310-323)5,6

Plaintiff’s Affidavit in Reply and in
Opposition to Cross Motion
(NYSCEF 324-331)7

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In this action, plaintiff seeks to recover damages for personal injuries sustained on May 15, 2018 when she allegedly tripped on a defect in the street and curb abutting a common driveway in front of the premises located at 181 and 183 Freedom Avenue, Staten Island New York. Said premises are owned and managed by defendant Doe Court Homeowner's Association, a.k.a., Doe Court Homeowner's Association, LTD (hereinafter, "Doe Court").

Presently before the Court are plaintiff's motions (Seq. Nos. 012 and 013) for relief pursuant to CPLR §2304, CPLR §3103(a), CPLR §3120(4), CPLR §3122, Judiciary Law §487 and Judiciary Law §431. Both motions seek identical relief. Plaintiff requests that "pursuant to new fraudulent evidence [sic]", her motion (Seq. No. 012) and affidavit in support dated June 11, 2021 should be disregarded, and her subsequent motion (Seq. No. 013) and affidavit in support dated June 18, 2021 should be considered instead. Thus, Motion Sequence No. 012 is deemed withdrawn.

Defendants Doe Court Homeowner's Association, LTD, Dawning Real Estate, and Yona and Yoni Maton (hereinafter, collectively "Doe Court") cross move pursuant to The Rules of the Chief Administrative Judge Section 130-1.1 for expenses and attorney's fees incurred in opposing plaintiff's alleged frivolous motion; and an order directing that Ms. Selvaggio be required to seek leave of Court prior to filing any further motions in this matter.

In moving pursuant to CPLR §3120(4) and CPLR §3122, Ms. Selvaggio seeks to prevent the use of any further disclosure devices. In particular, she objects to Doe Court's Supplemental Demand dated May 21, 2021 for authorizations (NYSCEF 291) with subpoenas duces tecum to obtain medical records and reports of examining and treating physicians and medical providers. Plaintiff maintains, per the Preliminary Conference Order in this matter, the "Discovery End

Date” in this case is October 26, 2019, nearly two years ago. However, a Certification Order declaring all discovery is complete and permitting the filing of the Note of Issue and Certificate of Readiness has not been issued by the Court. The Court also notes that discovery has been delayed due to the numerous motions (see discussion *infra*) filed by plaintiff throughout the course of this litigation. As such, plaintiff’s contention that Doe Court should be precluded from obtaining new discovery or an extension of the Preliminary Conference deadline is unavailing.

Ms. Selvaggio alleges that defendants’ Supplemental Demand for Authorizations improperly seeks the production of certain unspecified documents they already have in their possession and records that “do not pertain to the same body part”. She maintains defendants failed to set forth the “circumstances or reasons” the authorizations are required as per CPLR §3101(a)(4) and claims the subpoenas must be served on third parties, “not defendants’ adversary”. For these reasons, she requests a protective order pursuant to CPLR §3103(a) to prevent abuse, and an order pursuant to CPLR §2304 to quash the subpoenas duces tecum.

Ms. Selvaggio further raises purported claims under Judiciary Law §487 and unspecified violations of Judiciary Law §431 regarding Alyse Velger, Esq. and Ji-Hyong Lee, Esq., associates of Doe Court’s counsel, Milber Makris Plousadis & Seiden, LLP, and David Montag, Esq. a partner of the law firm. Plaintiff maintains they engaged in a pattern of “severe” acts of misconduct, including fraud, lies, misrepresentation of fact, collusion, deceit, filing false instruments, manipulation and tampering with evidence.

ANALYSIS

The *pro se* plaintiff’s objection to the disclosure arises from a misinterpretation of Doe Court’s Supplemental Demand dated May 21, 2021. The demand requires that Ms. Selvaggio provide duly executed and acknowledged “authorizations to be served with subpoenas duces

tecum requesting the production of [her] medical records”. Due to plaintiff’s unfamiliarity with this boilerplate language, the basis for her objection to the demand lacks merit. By executing the requested authorizations, plaintiff permits her healthcare providers to respond to a subpoena duces tecum to produce her medical records and reports. Her arguments indicate she erroneously construes the demand for authorizations as a subpoena. To the contrary, the Doe Court defendants have not served a subpoena upon her. Thus, CPLR §2304 and Rule 3120(4) are inapplicable to the instant matter.

Plaintiff further alleges the requested medical records and reports are not material and necessary to this litigation. Thus, she seeks a protective order pursuant to CPLR §3103.

CPLR §3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action”. The principle of full disclosure, however, does not give a party the right to uncontrolled and unfettered disclosure (*see McAlwee v. Westchester Health Assoc., PLLC*, 163 AD3d 547, 548 [2d Dept 2018]; *JPMorgan Chase, National Association v. Levenson*, 149 AD3d 1053, 1054 [2d Dept 2017]). While discovery is intended to be broad, it is not unlimited. “Unlimited disclosure...is not required and the rules provide that the court may issue a protective order denying, limiting, conditioning or regulating the use of any disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts” (*Accent Collections, Inc. v. Cappelli Enters., Inc.*, 84 AD3d 1283, 1283 [2d Dept 2011]; CPLR §3103[a]). Thus, to prevent abuse or prejudice to the parties, the Court is vested with broad discretion to issue an appropriate protective order pursuant to CPLR §3103(a) vacating improper demands that seek irrelevant information, are overbroad and unduly burdensome (*see Feger v. Warwick Animal Shelter*, 59 AD3d 68, 70 [2d Dept 2008]; *Scalone v. Phelps Mem. Hosp. Ctr.*, 184 AD2d 65, 70 [2d Dept 1992]).

Consonant with the foregoing principles, the Court finds plaintiff has not established her entitlement to a protective order denying and vacating defendants' Supplemental Demand for Authorizations dated May 21, 2021. The requested authorizations allow the Doe Court defendants to obtain Ms. Selvaggio's post-accident diagnostic imaging records as well as other medical treatment including, physical therapy, ophthalmological services and future surgery, directly relating to the alleged injuries to her left knee and ankle. Such disclosure is material and necessary in the defense of this action (CPLR §3101[a]). Thus, a protective order is not justified in this case.

Turning to Ms. Selvaaggio's allegations of misconduct under Judiciary Law §487, it is worthy to note that throughout these lengthy proceedings and voluminous motions, plaintiff has lodged vehement accusations of fraud on the Court, collusion, deceit, misrepresentation and lies on the part of defendants' attorneys. Pertinently, the Court rejected her claims that Doe Court engaged in some unconscionable scheme calculated to unfairly hampering the presentation of the parties claims and defenses.

In the present motion, plaintiff's assertions of misconduct are improperly before the Court in that she seeks to reargue prior motions (Motion Sequence Nos. 005¹ and 011²) wherein she raised the same perceived issues of, *inter alia*, fraud, collusion, deceit, misrepresentation, "blatant" lies and trickery on the part of defendants' attorneys, Mr. Ji-Hyong Li, Esq. and David

¹ Defendants' motion dated October 8, 2019 (Sequence No. 005) was brought, *inter alia*, to dismiss the action pursuant to CPLR §3124 an §3126 for plaintiff's willful failure to provide discovery responses per the Courts orders, and alternatively, to compel plaintiff to provide the outstanding discovery.

² Defendants' motion dated February 5, 2021 (Sequence No. 011) was brought, *inter alia*, to dismiss the complaint as against United States Liability Insurance Company.

J. Montag, Esq. (*see* CPLR 2221[d][2]). Those matters are raised in further detail and elaboration in the present motion (Seq. No. 013).

More particularly, Ms. Selvaggio's claims of misconduct on the part of defendants' counsel, Mr. Ji-Hyong Li, Esq., were previously addressed by the Court in rendering its Decision and Order dated January 21, 2020 in defendants' prior motion (Seq. No. 005) to dismiss the complaint and compel discovery. At the time, plaintiff alleged, *inter alia*, that Mr. Li repeatedly lied and misled the Court in the proceedings. She further asserted similar allegations against defendants' counsel, Mr. Montag, in a motion (Sequence No. 011) to dismiss plaintiff's complaint as against United States Liability Insurance Company, which the Court granted in a Decision and Order dated April 20, 2021. Ms. Selvaggio presently argues, *inter alia*, defendants' counsel, Mr. Li. and Mr. Montag, committed misconduct in litigating the previous motions (Seq. Nos. 5 and 6); and the Court overlooked the material evidence she submitted, and ignored counsel's "blatant lies, fraud, deceit, collusion trickery and dishonesty".

In view of the foregoing, Ms. Selvaggio's present assertions that Mr. Li and Mr. Montag engaged in a course of misconduct in violation of the Judiciary Law are, in effect, a misguided attempt to reargue and/or renew the prior decisions of this Court in Motion Sequence Nos. 005 and 011 (*see* CPLR 2221[d][2]). Here, the alleged "acts of misconduct" are, for the most part, a reiteration and amplification of the examples of alleged unethical misconduct at issue in the prior motions. Thus, Ms. Selvaggio is precluded from arguing again, or presenting new or different arguments, and additional facts not originally tendered in the underlying motions (*see* CPLR 2221[d][2]; *JP Morgan Chase Bank, N.A. v. Novis*, 157 AD3d 776, 778 [2d Dept 2018]; *Robinson v. Viani*, 140 AD3d 845, 847 [2d Dept 2016]).

Plaintiff further lodges claims of misconduct and/or violations of Judiciary Law §487 against Alyse Velger, Esq., another associate of defendants' attorneys, Milber Makris Plousadis & Seiden, LLP. Ms. Velger is accused of "tampering" with and "modifying" plaintiff's diagnostic imaging. In support, plaintiff submits a "screen shot" of a OneDrive link that was meant to contain plaintiff's uploaded diagnostic imaging. The OneDrive folder denotes it was "modified" on February 12 and April 12. Ms. Velger points out that a reference to a document that was "modified" via OneDrive is not a basis to establish the image was "tampered" with. Counsel affirms that when any action is taken with the folders, such as when the online shared drive folders were created, documents uploaded, and/or links created, the file is denoted as "modified"; this is a common feature of Microsoft OneDrive. In any event, plaintiff admittedly has original diagnostic imaging on disc. She and the examining physicians were unable to open the OneDrive link. Thus, there was no comparison of original images on disc and the purported "modified" imaging via the OneDrive. Plaintiff's allegations of misconduct on the part of Ms. Velger are baseless and uncorroborated.

The Court finds Ms. Selvaggio's accusations have failed to convince the Court that defendants' attorneys, Mr. Li, Mr. Montag and Ms. Velger, engaged in any conduct with the intent to deceive, collude, scheme and/or unfairly hampering the presentation of the parties' claims and defenses. Furthermore, her objections to the Supplemental Demand for Authorizations dated May 21, 2021 stem from a misunderstanding of the applicable statutory law and unfamiliarity with procedural matters. Therefore, defendants' request that plaintiff pay its insurance carrier's costs, including expenses and reasonable attorney's fees incurred in opposing this motion is denied without prejudice. However, in the interest of justice and judicial economy, plaintiff shall obtain leave of Court prior to filing any further motions in this action.

Accordingly, it is

ORDERED, the motion (Seq. No. 013) of plaintiff Christina Selvaggio pursuant to CPLR §2304, §3103(a), §3120(4), §3122, Judiciary Law §487 and Judiciary Law §431 is denied in its entirety, and plaintiff's motion (Seq. No. 012) for like relief was withdrawn; and it is further,

ORDERED, the cross motion (Seq. No. 014) of defendants Doe Court Homeowner's Association, LTD, Dawning Real Estate, and Yona and Yoni Maton pursuant to the Rules of the Chief Administrative Judge §130-1.1, directing plaintiff to pay defendants' insurance carrier's costs, including reasonable expenses attorney's fees incurred in opposing this motion is denied without prejudice; and it is further

ORDERED, plaintiff shall seek leave of Court prior to filing any further motions in this action; and it is further

ORDERED, the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER,



Dated: September~~30~~, 2021

HON. THOMAS P. ALIOTTA, J. S. C.