

Northwell Health, Inc. v Scott

Supreme Court of New York, New York County

June 26, 2020, Decided

653772/14

Reporter

2020 N.Y. Misc. LEXIS 3019 *; 2020 NY Slip Op 32092(U) **

[**1] **NORTHWELL** HEALTH, INC. F/K/A NORTH SHORE - LONG ISLAND JEWISH HEALTH SYSTEM, INC., LENOX HILL HOSPITAL, Plaintiff, - v - NORMAN **SCOTT**, Defendant. Index No. 653772/14; NORMAN SCOTT Plaintiff, -against- ST. FRANCIS HOSPITAL, STEPHEN SILVER M.D. Defendant. Third Party Index 595024/17

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

settlement, third-party, confidentiality, disclosure, Session, rent, space

Judges: [*1] HON. NANCY M. BANNON, J.S.C.

Opinion by: NANCY M. BANNON

Opinion

DECISION AND ORDER

NANCY M. BANNON, J.:

I. INTRODUCTION

In this breach of contract action, third-party defendant St. Francis Hospital moves pursuant to [CPLR 3124](#) and [3126](#) to compel third-party plaintiff Norman **Scott**, M.D. (Dr. **Scott**) to produce documents, including the settlement agreement between Dr. **Scott** and plaintiff **Northwell** Health Inc. (**Northwell**) in the [****2**] primary action. Specifically, St. Francis seeks an order directing (i) the parties to enter into the New York County stipulated protective order, (ii) Dr. **Scott** to produce the settlement agreement between himself and **Northwell** Health Inc. sought in St. Francis' third document demand pursuant to that stipulated protective order, (iii) Dr. **Scott** to produce all non-privileged documents in his possession responsive to St. Francis' fourth, fifth, eighth, and ninth document demands, and (iv) that Dr. Scott's amended complaint be dismissed with prejudice, or alternatively that Dr. Scott be precluded from offering any proof in this matter regarding amounts paid under the settlement agreement, should he fail to produce the documents. Dr. **Scott** does not oppose the motion. **Northwell** opposes the motion. [****2**] The motion is granted in part.

II. BACKGROUND

On December 10, 2014 **Northwell** filed the complaint in this action against Dr. **Scott** alleging a breach of his lease agreement for office space located at 210 East 64th Street in Manhattan. On January 10, 2017, Dr. Scott filed a third-party complaint against St. Francis seeking contribution, as St. Francis subleased a portion of the office space from Dr. Scott.

[**3] On February 24, 2017, St. Francis moved to sever the third-party action, which the court granted by order dated November 3, 2017. Dr. **Scott** and **Northwell** thereafter settled the primary action. St.

Francis was not a party to the settlement negotiations. On February 11, 2019, the parties uploaded a Stipulation of Discontinuance based upon the settlement. An order was entered on February 14, 2019 which incorrectly discontinued both the primary action and the third-party action against St. Francis. Dr. Scott then moved to restore the third-party action by order to show case on April 17, 2019. St. Francis did not oppose. The third-party action was restored by order dated June 3, 2019.

On September 30, 2019 Dr. Scott moved for leave to file an amended complaint asserting additional causes of [*3] action for breach of contract and unjust enrichment against St. Francis. By order dated November 26, 2019 Dr. Scott's motion was granted to the extent that he could amend his complaint to assert the breach of contract claim.

On December 31, 2019, St. Francis served its answer to the amended complaint alongside the document requests at issue in this motion. Specifically, St. Francis sought:

(3) A copy of any settlement agreement entered into between [Dr. Scott] and Northwell Health to resolve [the primary action].

[**4] (4) All Documents including but not limited to cancelled checks, bank statements, and wire transfer Documents, that reflect the total amount paid by [Dr. Scott] to Northwell Health to settle the [primary action].

(5) All Documents reflecting the final settlement terms between [Dr. Scott] and Northwell Health to resolve the [primary action].

(8) All Documents including but not limited to appraisals that reflect the fair market value of the real property that is the subject of the Session License Agreement relied upon by [Dr. Scott] and Northwell Health to calculate the settlement sum paid by [Dr. Scott] to settle the [primary action].

(9) All Communications between [Dr. Scott's] [*4] attorneys and attorneys for Northwell Health that reflect the terms and negotiation of the settlement agreement between [Dr. Scott] Northwell Health to resolve the [primary action].

Dr. Scott objected to St. Francis' demands on January 22, 2020, inasmuch as the document requests sought the settlement agreement in the primary action, which

he claims contained a confidentiality provision prohibiting him from disclosing the agreement or its terms absent a court order.

On January 30, 2020, counsel for St. Francis claims that he called Dr. Scott's attorney to see whether Dr. Scott would be willing to produce the settlement agreement under a stipulated protective order, and was informed by Dr. Scott's counsel that Dr. Scott would not produce the settlement agreement because of the confidentiality provision. Thereafter, St. Francis filed the instant motion.

[**5] III. DISCUSSION

Disclosure in New York civil actions is guided by the principle of "full disclosure of all matter material and necessary in the prosecution or defense of an action." CPLR 3101(a). The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will [*5] assist preparation for trial by sharpening the issues and reducing delay and prolixity. See Kapon v Koch, 23 NY3d 32, 988 N.Y.S.2d 559, 11 N.E.3d 709 (2014). CPLR 3124 provides that, "If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response." However, a party seeking to obtain production of private or confidential material must make a showing of necessity and an inability to obtain the information contained from another source. See Samide v Roman Catholic Diocese of Brooklyn, 5 AD3d 463, 773 N.Y.S.2d 116 (2nd Dept. 2004).

In support of its motion, St. Francis submits, *inter alia*, its discovery demands, communications with Dr. Scott, the Session License Agreement, and the amended third-party complaint in this action. These submissions establish that the documents sought are "material and necessary" to the determination of this [**6] action, and that the information sought cannot be obtained from another source.

The amended complaint asserts a single cause of action sounding in breach of contract against St. Francis. Specifically, Dr. Scott alleges that the amount St. Francis agreed to pay Dr. Scott was based upon the amount charged to Dr. Scott by Northwell for use and occupancy [*6] of the subleased space and that because Northwell sought additional rent in the primary

action in excess of the amount that Dr. **Scott** used to calculate the amounts owed by St. Francis, he is entitled to recover from St. Francis.

The Session License Agreement sets forth an explicit formula for calculating the rent, owed by St. Francis:

"From and after the Effective Date through Expiration Date, including any applicable renewal term, [St. Francis] shall pay to [Dr. Scott] for the use of the Licensed Space contemplated herein [Redacted Figure], which is an amount (computed and paid monthly) equal to (i) the total actual out-of-pocket amount paid by [Dr. Scott] pursuant to the Master License for the applicable month, divided by [Redacted Figure] (that being the total number of monthly examination room sessions available at the Premises), multiplied by (ii) [Redacted Figure] (that being the number of monthly examination room sessions used by physicians who use the Premises during such month and are employed [St. Francis])."

In addition, the Session License Agreement recognized that the rent paid by Dr. Scott for the space that he sublet to St. Francis may increase. In that case, the rent owed by St. Francis would increase proportionately. The Session License Agreement specifically states:

"If the amount required to be paid by [Dr. Scott] shall increase in the future, then the Fee paid to [Dr. Scott] by [St. Francis] shall be increased in a percentage equal to the percentage increase in the amount required to be paid by [Dr. Scott] under the Master License."

The documents sought in St. Francis' demands go directly to the crucial issue in this case - how much money Dr. **Scott** paid **Northwell** in additional rent to resolve the primary action. St. Francis has established that the settlement agreement and the documents that reflect the terms of that agreement will reveal the amount of additional rent Dr. **Scott** agreed to pay **Northwell** and are thus material and necessary to this action. Furthermore, inasmuch as it appears that neither Dr. **Scott** nor **Northwell** would disclose the terms of the settlement agreement, and they are the only parties to said agreement, St. Francis further established that its inability to obtain the information elsewhere.

The court notes that Dr. **Scott** did not oppose the instant motion, reiterating only that by the terms of his settlement agreement with **Northwell**, he cannot disclose the agreement or its terms without a court

order.

Northwell However, **Northwell** does oppose the instant motion, claiming in a conclusory fashion (i) that it purportedly has proprietary business reasons for keeping the terms of the settlement confidential, and that disclosure of the settlement terms may impact its relationship with other associated physicians, and (ii) a letter from **Northwell** to Dr. **Scott** shows the price that **Northwell** was seeking to charge Dr. **Scott**, and therefore the terms of the settlement agreement are not material or necessary.

These arguments are without merit. **Northwell** provides no decisional authority to support its position that a confidentiality agreement may preclude a party from obtaining information that it cannot otherwise obtain. Moreover, the plaintiff consents to a stipulated protective order. To the extent that the letter propounded by **Northwell** may demonstrate the amount that Dr. **Scott** was supposed to pay, it does not demonstrate the amounts that Dr. **Scott** actually paid under the settlement agreement, and thus the amounts which St. Francis could be liable for under the Session License Agreement.

Therefore St. Francis' motion is granted to the extent that Dr. **Scott** shall produce the settlement agreement between himself and **Northwell** Health Inc. sought in St. Francis' third document demand and all non-privileged documents in his possession responsive to St. Francis' fourth, fifth, eighth, and ninth document demands.

However, to the extent that the instant motion seeks an order directing the parties to enter into a New York County stipulated protective order that branch of the motion is denied. While it is true that "material confidential in nature ... shall be accorded judicial safeguards where possible" (see *McLaughlin v G.D. Searle, Inc.*, 38 AD2d 810, 811, 328 N.Y.S.2d 899 [2nd Dept. 1972]) and the court may, under proper circumstances, condition the production of specified documents on the execution of a confidentiality agreement (see *Yatter v William Morris Agency, Inc.*, 273 AD2d 83, 710 N.Y.S.2d 525 [1st Dept. 2000]), the court sees no basis to order the execution of a specific confidentiality agreement. St. Francis has represented its willingness to stipulate to the confidentiality of the settlement agreement and **Northwell's** conclusory assertion of 'proprietary business reasons' fails to *prima facie* establish its entitlement to a protective order. See [Vivitorian Corp. v First Cent. Ins. Co.](#), 203 AD2d 452.

[610 N.Y.S.2d 604 \(2nd Dept. 1994\)](#).

St. Francis also seeks an order directing that Dr. Scott's amended complaint be dismissed with prejudice, or alternatively that [*10] Dr. Scott be precluded from offering any proof in this matter regarding amounts paid under the settlement agreement, should he fail to produce the documents. That application is [**10] denied as premature, as the court could not properly tailor a sanction pursuant to [CPLR 3126](#) without first knowing the extent to which disclosure was or was not produced.

However, defendant Scott is cautioned that [CPLR 3126](#) authorizes the court to sanction a party who "refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed" and that "a failure to comply with discovery, particularly after a court order has been issued, may constitute the "dilatory and obstructive, and thus contumacious, conduct warranting the striking of the [answer]." [Kutner v Feiden, Dweck & Sladkus](#), 223 AD2d 488, 489, 637 N.Y.S.2d 15 (1st Dept. 1998); see [CDR Créances S.A.S. v Cohen](#), 104 A.D.3d 17, 957 N.Y.S.2d 75 (1st Dept. 2012); [Reidel v Ryder TRS, Inc.](#), 13 AD3d 170, 786 N.Y.S.2d 487 (1st Dept. 2004). Furthermore, [CPLR 3101\(a\)](#) provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action" and this language is "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." [Osowski v AMEC Constr. Mgt., Inc.](#), 69 AD3d 99, 106, 887 N.Y.S.2d 11 (1st Dept. 2009) quoting [Allen v Crowell-Collier Publ. Co.](#), 21 NY2d 403, 406-407, 235 N.E.2d 430, 288 N.Y.S.2d 449 (1968).

[**11] IV. CONCLUSION

Accordingly, it is hereby, [*11]

ORDERED that the motion of third-party defendant St. Francis Hospital's pursuant to [CPLR 3124](#) is granted to the extent that defendant/third-party plaintiff Norman **Scott** shall produce the settlement agreement between himself and **Northwell** Health Inc. sought in St. Francis' third document demand and all non-privileged documents in his possession responsive to St. Francis' fourth, fifth, eighth, and ninth document demand within 20 days of service of this order; and the motion is otherwise denied, and it is further,

ORDERED that the parties are to contact chambers to schedule a settlement conference on or before August 14, 2020.

This constitutes the Decision and Order of the court.

Dated: June 26, 2020

/s/ Nancy M. Bannon

ENTER: **HON. NANCY M. BANNON**

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