

Rihn v Hernandez

2024 NY Slip Op 31256(U)

April 8, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 206089/2022

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

INDEX No. 206089/2022
CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 2-8-2024
SUBMIT DATE 2-8-2024
Mot. Seq. # 01 - MG in part

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REBECCA B. RIHN,

Plaintiff,

-against-

ROSA L. RODRIGUEZ HERNANDEZ and
SELVIN RODRIGUEZ HERNANDEZ,

Defendants.

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Upon the following papers read on this motion by plaintiff for a protective order e-filed in the NYSCEF system as documents 21- 31, 32 - 33 and 34 [mot. seq. 001];

The motion is decided as follows:

The plaintiff moves for a protective order pursuant to CPLR 3103 relating to post-deposition discovery demands seeking information about plaintiff’s social media accounts. Defendants oppose the motion, alleging that the information sought is relevant and material to the injuries allegedly sustained by the plaintiff.

Defendant served post-EBT demands upon the plaintiff on June 15, 2023 seeking the following:

- Duly executed and acknowledged authorizations permitting the undersigned to inspect and obtain copies of the records and reports of:
1. Authorizations for access to plaintiff’s current and historic social medial accounts, including Instagram and Facebook, including all deleted pages, private pages and related information.
 2. Authorizations for access to “Atlas the Handsome Dog’s” current and historic social medial accounts, including Instagram, including all deleted pages, private pages and related information.

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Plaintiff served a rejection of these demands upon the defendant on June 15, 2023, citing various objections [document 15].

The commencement of a personal injury action does not render a party's entire social media account automatically discoverable. *Forman v. Henkin*, 30 N.Y.3d 356 [2018]. Social media information is discoverable whenever defendants "establish a factual predicate for their request by identifying relevant information in plaintiff's [social media] account--that is, information that 'contradicts or conflicts with plaintiffs alleged restrictions, disabilities, and losses, and other claims' (*Tapp v New York State Urban Development. Corp.*, 102 AD3d 620 [1st Dept 2013], quoting *Patterson v Turner Constr. Co.*, 88 AD3d 617 [1st Dept. 2011]).

In opposing the plaintiff's motion for a protective order, the defendants argue the following:

Plaintiff clearly stated she posted photographs following the subject accident. On page 47 of her continued EBT line 7-8, plaintiff was asked "Have you posted any photographs on Facebook since the accident?" and plaintiff responded "yes." As such the undersigned needs to confirm if plaintiff posted anything regarding her alleged injuries or anything regarding the subject accident.

The Court finds that defendants have not shown a "factual predicate" for their demands as they have failed to set forth any specific "information that contradicts or conflicts with the parties alleged restrictions, disabilities, and losses, and other claims". (See *Tapp v. New York State Urban Dev. Corp.*, *id.*).

In a recently decided case, the Court in the Second Department held the following:

In a personal injury case . . . it is appropriate to consider the nature of the underlying incident and the injuries claimed and to craft a rule for discovering information specific to each" (*Forman v Henkin*, 30 NY3d 656, 665 [2018]). "[C]ourts should first consider the nature of the event giving rise to the litigation and the injuries claimed, as well as any other information specific to the case, to assess whether relevant material is likely to be found" (*id.* at 665). "Second, balancing the potential utility of the information sought against any specific 'privacy' or other concerns raised by the [plaintiff], the court should issue an order tailored to the particular controversy that identifies the types of materials that must be disclosed" (*id.*). Although "[d]iscovery statutes are to be construed liberally so that there should be disclosure of any material that is even 'arguably relevant' " (*Gentile v Ogden*, 208 AD3d 855, 856 [2022] [alteration omitted], quoting *Shanahan v Bambino*, 271 AD2d 519, 519 [2000]), "unlimited disclosure is not required, and supervision of disclosure is generally left to the trial court's broad discretion" (*citations omitted*)

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Here, the Supreme Court providently exercised its discretion in denying those branches of the defendants' motion which sought authorizations to obtain records from the plaintiff's Facebook and other social media accounts beginning two years before the date of the accident, authorizations to obtain records from the E-Z Pass account of the plaintiff's wife from the date of the accident, a copy of the plaintiff's passport, and copies of all photographs taken by the plaintiff with his cell phone since the date of the accident. Under the circumstances of this case, the defendants failed to demonstrate that the discovery sought was reasonably likely to yield relevant evidence regarding the severity of the alleged injuries suffered by the plaintiff (see *Forman v Henkin*, 30 NY3d at 665; cf. *Gentile v Ogden*, 208 AD3d at 857; *Abedin v Osorio*, 188 AD3d at 766-767)

Sereda v A.J. Richard & Sons, Inc., 219 AD3d 1458, 1459 [2d Dept 2023]

Plaintiff testified in her deposition that she had posted photographs on Facebook and Instagram since the accident, but had not posted any statements relating to the accident [document 29]. Therefore, in applying the balancing test set forth in *Sereda*, it does not appear as if any relevant information is likely to be found on the plaintiff's social media accounts relating to the injuries she allegedly sustained in the accident. Balancing the potential utility of the information sought against the privacy concerns of the plaintiff, the Court finds that the defendant's Demand for Authorizations served on June 15, 2023 is overly broad. The motion for a protective order is granted to the extent that plaintiff is directed, within twenty days of the date of this Order, to provide to the defendants copies of all photographs posted on plaintiff's Instagram and Facebook accounts from the time period of the accident until two years post-accident which have not already been provided in exhibits "G" and "H" to plaintiff's moving papers [documents 30 and 31], and a protective order is granted regarding the remainder of the records and documents demanded in defendant's Demand for Authorizations dated June 15, 2023.

The foregoing constitutes the decision and Order of this Court.

Dated: April 8, 2024



HON. JOSEPH A. SANTORELLI
J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION