
RAZIM SEFEROVIC, an infant under the age of fourteen (14) years, by his mother and natural guardian FADILJA DERVISEVIC and FADILJA DERVISEVIC, Individually,

Plaintiffs,

against

THE CITY OF NEW YORK, THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, "JOHN DOE" M.D. (Name being fictitious and unknown but intended to be the physician who discharged a woman known as GOLDROKH KHAVAN, from Elmhurst Hospital in 1999) PETER VUKADIN, ANNA VUKADIN, MILE MRKIC and MARIJA MRKIC,

Defendant.

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Opposing Affidavits	<u>2</u>

Upon the foregoing cited papers, the Decision/Order on plaintiff's motion, pursuant to CPLR R. 3124, to compel defendants to respond to its discovery demands, is as follows:

On October 21, 1999, Goldrokh Khavan threw hot liquid on the plaintiffs, Razim Seferovic and Fadilja Dervisevic, causing both to sustain burns. Upon the information and belief of plaintiff's attorney, Goldrokh Khavan has been hospitalized on numerous occasions for mental illness at Elmhurst Hospital of the New York City Health and Hospitals Corporation and the New York City Police Department has been called more than fifteen times due to the behavior of Ms. Khavan. Plaintiff alleges that the City of New York and the New York City Health and Hospitals Corporation negligently released Ms. Khavan, resulting in plaintiffs' injuries and the instant lawsuit.

On March 7, 2013, plaintiff served its combined demands for discovery upon defendants. Plaintiff's discovery demands seek any and all complaints filed against Goldrokh Khavan from January 1, 1999 through October 20, 1999 with the New York City Police Department, Civilian Complaint Review Board and any other City agency as well as records from Elmhurst Hospital for Goldrokh Khavan prior to October 20, 1999. Plaintiff also seeks a deposition of a City witness after receipt of the discovery documents.

Defendants' object to plaintiff's demands on the grounds that plaintiff's claims against the City is one of improper police protection, and as such, prior complaints are irrelevant to this action. Defendants cite Riss v. City of New York, 22 N.Y.2d 579 (1968) and its progeny Valdez v. City, 18 N.Y.3d 69 (2011); Rivera v. City of New York, 90 A.D.3d (2d Dept. 2011); Rozell v. Milby, 98 A.D.3d 960 (2d Dept. 2012) in support of their contention that under the "public duty" rule, plaintiff must establish a "special duty" owed to plaintiffs by the City and that absent such a showing, plaintiffs' causes of action against the City are barred. However, the "public duty" rule has no application when the State engages in a proprietary function such as providing medical and psychiatric care, See, Schrempf v. State, 66 N.Y.2d 289, 294 (1985). In those cases, the State is held to the same duty of care as private institutions engaging in the same activity, See, Miller v. State of New York, 62 N.Y.2d 506, 511 (1984). This duty has been found to apply when the State has been negligent in discharging a mental patient, See, St. George v. State of New York, 283 A.D. 245 (3d Dept. 1954); Taig v. State of New York, 19 A.D.2d 182 (3d Dept, 1963); Bell v. New York City Health & Hosps. Corp., 90 A.D.2d 270 (2d Dept. 1982). As such, the records demanded by plaintiffs from the New York City Police Department and the New York City Health and Hospitals Corporation are relevant to this action. The Civilian Complaint Review Board is an agency which reviews complaints of police misconduct involving use of force, abuse of authority, discourtesy and offensive language. As there have been no complaints of such police misconduct in this case, such records are irrelevant.

Defendants also object to plaintiffs' demands on the grounds that they contain privileged, private information relating to Ms. Khavan, who is not a party to the instant lawsuit. Specifically, defendants claim that they are unable to produce any police reports or medical records without authorization from Ms. Khavan. Pursuant to Mental Hygiene Law § 33.13[c][1], [e], clinical records tending to identify patients or clients and clinical records maintained at a facility licensed or operated by the New York State Office of Mental Health shall not be released except pursuant to a court order requiring disclosure upon a finding that the "interests of justice significantly outweigh the need for confidentiality." The proper procedure for determining which documents should be disclosed is in camera review of the medical records to determine if there is any relevant information that should be disclosed See, Sohan v. Long Island College Hospital, 282 A.D.2d 597 (2d Dept. 2001); Moore v. St. John's Episcopal Hosp., 89 A.D.2d 618 (2d Dept. 1982). As such, Ms. Khavan's medical records may be disclosed after an in camera inspection.

Plaintiffs are directed to subpoena the medical records in the possession of the New York City Health and Hospitals Corporation and/or Elmhurst Hospital relating to Goldrokh Khavan prior to October 20, 1999 and any complaints about Ms. Khavan with the New York City Police Department between January 1, 1999 and October 20, 1999 to this Court for in camera inspection. Plaintiffs shall subpoena such records within thirty days of service of a copy of this Order together with notice of entry. Thereafter, plaintiffs shall schedule a mutually agreeable date and time with this Court for in camera inspection prior to September 19, 2014. Plaintiff's may notice a deposition of a City witness after the in camera inspection. This constitutes the decision and order of the Court.

June 4, 2014

Date

HON. LARRY L. LOVE
Judge, Civil Court