

Decided on July 23, 2008

**Supreme Court, Queens County**

**Akiya Allen, Plaintiff,**  
  
**against**  
  
**Black Star Lines Commuter Service, Inc. et al.,**  
**Defendants.**

25034/2005

Charles J. Markey, J.

This is an order to show cause brought by counsel for defendants Black Star Lines Commuter Service, Inc. and Jonah Okojinnanna for discovery sanctions against the plaintiff. This case had been assigned for jury selection by the Assigning Justice in the Trial Assignment Part ("TAP"), who, according to both plaintiff's counsel and Black Star's counsel, specifically reserved, for the undersigned's decision, a major discovery issue. A jury was picked. Since I believe that defendants' discovery rights were abridged in a significant way, including the plaintiff's failure to provide authorizations as per an order signed earlier by the TAP Assigning Justice, the undersigned disbanded the jury and ordered, pursuant to a stipulation by all counsel, further discovery, including another examination before trial ("EBT") of the plaintiff.

Both my law secretary, Howard L. Wieder, Esq., and I met with counsel on June 23, 2008 to hear extensive arguments regarding the parties' discovery disputes. Following a conference, counsel for all sides praised Mr. Wieder's help in getting the parties to agree to an EBT that was to occur on June 24, 2008. Upset that the defendants were using the extra EBT to obtain excessive discovery, H.Q. Nguyen, Esq., of counsel to the attorneys of record for plaintiff, Hecht Kleeger Pintel & Damashek, admittedly "busted" the June 24 deposition of the plaintiff.

On July 18, 2008, I heard extensive arguments by Leonard Greci, Esq., of counsel for the

moving defendants, Thomas Gebhardt, Esq., of counsel to the co-defendant, and Mr. Nguyen.

Considering the arguments made at the July 18 oral argument on the order to show cause and the thick written submissions by the moving defendants and the plaintiff, the order to show cause must be granted to the following extent:

1. Plaintiff shall appear for an EBT on July 31, 2008, at 10:00 A.M. sharp. The EBT will be held in Mr. Nguyen's office. Defendants will pay for the EBT cost and will pay for an expedited copy of the EBT to be sent to Mr. Nguyen by overnight delivery.
2. Mr. Nguyen or any attorney representing the plaintiff shall not interpose any direction to the [\*2] witness not to answer a question. There shall be no further "busting" of a deposition. All objections made on the record are reserved for trial, but the witness shall answer each and every question.
3. There is no reason why defense counsel should be constricted in their lines of questioning. Their questioning shall not be limited to the supplemental bills of particulars, but may include all aspects of DAMAGES only, not liability. Defense counsel may ask questions pertaining to plaintiff's injuries or how she has been affected since the date of the last EBT to date. Any attempt to disrupt the EBT or to prevent answers will result in an order by this Court precluding the plaintiff from testifying and/or a directed verdict in favor of the defendants by the Court.
4. Plaintiff shall appear for an independent medical examination ("IME") on August 5, 2008, at an office and time to be designated by Mr. Greci. The report of that IME shall be prepared immediately and e-mailed and sent by overnight delivery to Mr. Nguyen.
5. The Court still has reserved August 12 for jury selection in this case, and the case shall be tried from day to day, until completed. Only for good and sufficient cause will this court adjourn the August 12 trial date.

In reaching this decision, the Court expresses its appreciation for all counsel, Mr. Nguyen, Mr. Greci, and Mr. Gebhardt who have argued with passion and reason for their respective clients. The Court principally relies not upon Mr. Nguyen's stipulation made in court, which must be respected, but more important, upon the supplemental bill of particulars served by Hecht, Kleeger, Pintel & Damashek ("the Hecht law firm") on May 16, 2008. The supplemental bill by the Hecht law firm contained a lot of new information, including specific dollar amounts for treatment and medication.

The undersigned is concerned with fundamental justice, not with an obsessive view of advancing paper statistics of days on trial at the cost of a party's discovery rights. Compliance with this order is paramount, and no violation will be tolerated.

The foregoing constitutes the decision, order, and opinion of the Court.

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Hon. Charles J. Markey

Justice, Supreme Court, Queens County

Dated: Long Island City, New York

July 23, 2008