

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Reda v Port Auth. of N.Y. & N.J.

Reda v. Port Auth. of N.Y. & N.J., 2020 NY Slip Op 07113 (App. Div. 2020) · No. 2019-04291 · Decided  
November 25, 2020

SUMMARY

The Appellate Division, Second Department, reversed an order granting the plaintiff's motion to quash subpoenas seeking depositions of the decedent's nonparty treating physicians. The court held that the defendants satisfied their initial obligation under CPLR 3101(a)(4) by providing adequate notice of the circumstances or reasons for the disclosure, and the plaintiff failed to show that the requested disclosure was irrelevant.

CASE DETAILS

|                       |                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                        |
| WRITING FOR THE COURT | Joseph J. Maltese, J.P.; Mark C. Dillon, J.; John M. Leventhal, J.;<br>Francesca E. Connolly, J.                                              |
| JURISDICTION          | New York                                                                                                                                      |
| DECIDED               | November 25, 2020                                                                                                                             |
| DOCKET                | 2019-04291                                                                                                                                    |
| DISPOSITION           | reversed                                                                                                                                      |
| PROCEDURAL POSTURE    | Defendants appealed from an order granting the plaintiff's motion to quash subpoenas ad testificandum served on nonparty treating physicians. |
| STANDARD OF REVIEW    | Review of the Supreme Court's disclosure ruling for error of law.                                                                             |
| PRECEDENTIAL VALUE    | Published appellate opinion                                                                                                                   |
| PARTIES               | Port Authority of New York and New Jersey, et al. v. Pamela Reda                                                                              |

TOPICS

- discovery dispute
- civil procedure
- wrongful death
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether defendants seeking nonparty disclosure under CPLR 3101(a)(4) made the required initial showing by apprising the subpoenaed physicians of the circumstances or reasons for the disclosure.
2. Whether the plaintiff, after that initial showing, established that the requested depositions were irrelevant or otherwise futile so that the subpoenas should be quashed.

## HOLDINGS

1. A party serving a nonparty subpoena has an initial minimal obligation to show that the nonparty was apprised of the circumstances or reasons for the requested disclosure; defendants satisfied that obligation by providing the treating physicians adequate notice.
2. The plaintiff failed to establish that the requested disclosure was irrelevant to the action; therefore, the motion to quash the subpoenas should have been denied.

## KEY QUOTATIONS

*“Under that statute, the party who served the subpoena has an initial minimal obligation to show that the nonparty was apprised of the circumstances or reasons that the disclosure is sought, and once that is satisfied, it is then the burden of the person resisting the subpoena to establish the inevitability or obviousness of the futility of the process to uncover anything legitimate or that the information sought is utterly irrelevant to any proper inquiry” ([\*1])*

## FACTUAL BACKGROUND

The action seeks damages for wrongful death. Defendants sought to depose the decedent's treating physicians, who were nonparties and had not been identified as witnesses whom the plaintiff intended to call as experts at trial. Defendants provided the physicians with notice of the circumstances or reasons for the requested disclosure, but the plaintiff challenged the subpoenas as irrelevant and moved to quash them.

## PROCEDURAL HISTORY

In a wrongful-death action, the defendants subpoenaed the decedent's treating physicians for depositions. The Supreme Court, Kings County, granted the plaintiff's motion to quash the subpoenas, concluding that the defendants had not established special circumstances warranting the depositions. The Appellate Division reversed and denied the motion.

## DISPOSITION

reversed

## CASES CITED

- Matter of Kapon v Koch, 23 NY3d 32, 38-39

- *Bianchi v Galstar Mgt. Corp.*, 131 AD3d 558

## OPINION

### PER CURIAM.

*Reda v Port Auth. of N.Y. & N.J.* (2020 NY Slip Op 07113) *Reda v Port Auth. of N.Y. & N.J.* 2020 NY Slip Op 07113 Decided on November 25, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on November 25, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department JOSEPH J. MALTESE, J.P.

MARK C. DILLON JOHN M. LEVENTHAL FRANCESCA E. CONNOLLY, JJ. 2019-04291 (Index No. 3051/16) [\*1]Pamela Reda, etc., respondent, vPort Authority of New York and New Jersey, et al., appellants. London Fischer LLP, New York, NY (Brian A. Kalman, Anthony F. Tagliagambe, Shorav Kaushik, and Gerber Ciano Kelly Brady LLP [Brendan T. Fitzpatrick], of counsel), for appellants.

Wingate, Russotti, Shapiro & Halperin, LLP, New York, NY (David M. Schwarz of counsel), for respondent. DECISION & ORDER In an action to recover damages for wrongful death, the defendants appeal from an order of the Supreme Court, Kings County (Pamela L. Fisher, J.), dated February 4, 2019.

The order granted the plaintiff's motion to quash subpoenas ad testificandum served upon nonparties. ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion to quash subpoenas ad testificandum served upon nonparties is denied.

In this action to recover damages for wrongful death, the plaintiff moved to quash subpoenas seeking to take depositions of the decedent's treating physicians, who are nonparties to the action, and who have not been identified as witnesses whom the plaintiff intends to call as experts at trial.

The Supreme Court granted the motion, determining that the defendants failed to establish that special circumstances existed to warrant the depositions. The defendants appeal. CPLR 3101(a) (4), concerning disclosure from nonparties to the action, is applicable here.

Under that statute, the party who served the subpoena has an initial minimal obligation to show that the nonparty was apprised of the circumstances or reasons that the disclosure is sought, and once that is satisfied, it is then the burden of the person resisting the subpoena to establish the inevitability or obviousness of the futility of the process to uncover anything legitimate or that the information sought is utterly irrelevant to any proper inquiry (see *Matter of Kapon v Koch*, 23 NY3d 32, 38-39).

In this case, the defendants established that they provided the subpoenaed nonparty treating physicians with adequate notice of the circumstances or reasons requiring the disclosure, shifting the burden to the plaintiff to establish that the disclosure sought was irrelevant to the action, which the plaintiff failed to sustain (see *Bianchi v Galstar Mgt. Corp.*, 131 AD3d 558).

Accordingly, the Supreme Court should have denied the plaintiff's motion to quash the subpoenas. MALTESE, J.P., DILLON, LEVENTHAL and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court