

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FIRST DEPARTMENT

Rucinski v. More Restoration Co. Inc.

2017 NY Slip Op 01137 (N.Y. Ct. App. 2017) · No. 3076N; 303087/12; 83924/12; 83996/12; 83739/13;  
84015/15; 84072/15 · Decided February 10, 2017

SUMMARY

The Appellate Division, First Department affirmed the denial of defendants' request to compel plaintiffs to provide HIPAA-compliant Arons authorizations for depositions of medical providers concerning statements about the cause of a construction accident. The court held that the requested discovery was relevant but that Arons authorizations were unnecessary because defendants sought depositions under CPLR 3101(a)(4), rather than informal interviews. The court dismissed the remaining appeal as premature because there was no indication that the proposed subpoenas had been issued or served.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Sweeny, J.P.; Acosta, J.; Mazzarelli, J.; Manzanet-Daniels, J.; Webber, J.                                                                                                                                                                                                                                    |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                      |
| DECIDED               | February 10, 2017                                                                                                                                                                                                                                                                                             |
| DOCKET                | 3076N; 303087/12; 83924/12; 83996/12; 83739/13; 84015/15; 84072/15                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Defendants appealed from an order of Supreme Court, Bronx County, denying their motion to compel plaintiffs to provide HIPAA-compliant Arons authorizations for medical providers or to so-order proposed subpoenas for depositions concerning statements in medical records about the cause of the accident. |
| STANDARD OF REVIEW    | Abuse of discretion; the Appellate Division reviewed whether Supreme Court providently exercised its discretion in denying the discovery request.                                                                                                                                                             |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                                     |

## PARTIES

Kraus Management, Inc., Franklin Kite Housing Development Fund Corporation v. Zbigniew Rucinski, et al.

## TOPICS

discovery dispute

civil procedure

hearsay

construction law

appellate procedure

## PRACTICE AREAS

civil procedure

construction law

evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether defendants were entitled to compel plaintiffs to provide HIPAA-compliant Arons authorizations so defendants could depose plaintiff's medical providers about statements in medical records concerning the cause of the accident.
2. Whether the Appellate Division could determine the propriety of proposed subpoenas that had not been issued or served.

## HOLDINGS

1. No. Because defendants sought depositions under CPLR 3101(a)(4), rather than informal interviews under Arons v. Jutkowitz, plaintiffs were not required to provide HIPAA-compliant authorizations.
2. No. The appeal concerning the proposed subpoenas was dismissed as premature because there was no indication that the subpoenas had been issued or served.

## KEY QUOTATIONS

*“While the discovery sought is relevant under the broad standard of CPLR 3101, the court providently exercised its discretion in denying defendants' request to compel plaintiffs to provide Arons authorizations.”*

*“Here, defendants sought depositions of plaintiff's medical providers pursuant to CPLR 3101(a)(4), not interviews, and specified that the subject of the depositions was not diagnosis and treatment, but statements recorded in medical records relating to the cause of the accident.”*

## FACTUAL BACKGROUND

Zbigniew Rucinski alleged that he was struck by a falling object while performing construction work at a building owned and managed by defendants. His medical records contained conflicting accounts of how the accident occurred, and the records alone did not resolve the issue. Defendants sought to depose the medical providers who created the records about statements concerning the accident's cause.

## PROCEDURAL HISTORY

In a Labor Law § 240(1) action, defendants sought discovery from plaintiff's medical providers regarding statements in medical records describing how the accident occurred. Supreme Court denied the request for

authorizations. The Appellate Division affirmed that portion of the order and dismissed the remainder of the appeal as premature because the subpoenas had not been issued or served.

## DISPOSITION

affirmed

## CASES CITED

- Arons v. Jutkowitz, 9 NY3d 393 (2007)
- Matter of Kapon v. Koch, 23 NY3d 32, 38 (2014)
- Benavides v. City of New York, 115 AD3d 518 (1st Dept 2014)
- Cuomo v. Long Is. Light. Co., 71 NY2d 349, 354 (1988)

## OPINION

### PER CURIAM.

Rucinski v More Restoration Co. Inc. (2017 NY Slip Op 01137) Rucinski v More Restoration Co. Inc. 2017 NY Slip Op 01137 Decided on February 10, 2017 Appellate Division, First 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 February 10, 2017 Sweeny, J.P., Acosta, Mazzairelli, Manzanet-Daniels, Webber, JJ. 3076N 303087/12 83924/12 83996/12 83739/13 84015/15 84072/15 [\*1] Zbigniew Rucinski, et al., Plaintiffs-Respondents, vMore Restoration Co. Inc., et al., Defendants, Kraus Management, Inc., et al., Defendants-Appellants. [And Six Third-Party Actions] Lester Schwab Katz & Dwyer, LLP, New York (Stewart G. Milch of counsel), for appellants.

Pollack, Pollack, Isaac & DeCicco, LLP, New York (Brian J. Isaac of counsel), for respondents. Order, Supreme Court, Bronx County (Betty Owen Stinson, J.), entered January 6, 2016, which, to the extent appealed from, denied the motion of defendants Kraus Management, Inc. and Franklin Kite Housing Development Fund Corporation (hereinafter, defendants) to the extent it sought an order compelling plaintiffs to provide HIPAA-compliant Arons authorizations for certain medical personnel who authored reports containing statements concerning how the accident occurred, or so-ordering proposed subpoenas addressed to those medical professionals for depositions limited to that topic, unanimously affirmed, to the extent it denied the motion to compel plaintiffs to provide authorizations, and the appeal therefrom otherwise dismissed, as premature, without costs.

In this Labor Law § 240(1) action, plaintiff Zbigniew Rucinski alleges that he was struck by a falling object while performing construction work at a building owned and managed by defendants. Conflicting accounts of how plaintiff's accident took place appear in his medical records, and the records, alone, do not clarify how the accident occurred. Defendants requested

that plaintiff provide authorizations pursuant to *Arons v Jutkowitz* (9 NY3d 393 [2007]), so that they could depose the medical providers who created the records, pursuant to proposed subpoenas providing notice that testimony was sought concerning the statements in the medical records about the cause of plaintiff's accident.

Plaintiffs objected that the discovery sought concerning hearsay statements was irrelevant. While the discovery sought is relevant under the broad standard of CPLR 3101 (see *Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]; *Benavides v City of New York*, 115 AD3d 518 [1st Dept 2014]), the court providently exercised its discretion in denying defendants' request to compel plaintiffs to provide Arons authorizations.

In *Arons v Jutkowitz*, the Court of Appeals permitted informal interviews of an adverse party's treating physician, provided that a valid authorization has been provided, and that the attorney makes clear that "any discussion with counsel is entirely voluntary and limited in scope to the particular medical condition at issue" (id. at 410, 413-415).

Here, defendants sought depositions of plaintiff's medical providers pursuant to CPLR 3101(a)(4), not interviews, and specified that the subject of the depositions was not diagnosis and treatment, but statements recorded in medical records relating to the cause of the accident.

Accordingly, there was no need for plaintiff to provide HIPAA-compliant authorizations. There being no indication that defendants have been issued or served (CPLR 2302[a]), no determination can be made with respect to whether the subpoenas are proper (see *Cuomo v Long Is. Light. Co.*, 71 NY2d 349, 354 [1988]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 10, 2017 CLERK