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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CIVIL TERM : PART 17

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JULIAN E. HOLTON,

Plaintiff,

Index No.
710736/19

-against-

EXCERPT

NEW YORK CITY TRANSIT AUTHORITY, KAI I. REYES, A DUIE PYLE, INC & IURII DORONIN,

Defendants.

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Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
March 26, 2025

B E F O R E:

THE HONORABLE JOSEPH J. ESPOSITO
Supreme Court Justice

A P P E A R A N C E S:

For the Plaintiff:
COHEN & COHEN
104-70 Queens Boulevard, Suite 312
Forest Hills, New York 11375
BY: ALBERT K. KIM, ESQ.

For the Defendant NYCTA/Reyes:
KRITZER LAW GROUP
180 East Main Street, Suite 204
Smithtown, New York 11787
BY: DAVID S. KRITZER, ESQ.

For the Defendant Doronin/A Duie Pyle:
SOBEL PEVZNER, LLC
464 New York Avenue, Suite 100
Huntington, New York 11743
BY: CURTIS SOBEL, ESQ.

VICTORIA A. BIFULCO
Senior Court Reporter

THE COURT: Mr. Kim, anything else?

MR. KIM: I just need clarification on ruling regarding Dr. Gerling.

THE COURT: I don't know what he is going to question.

You know, if you take a look at that case that you gave me, the Court in Lopes included in its decision the questions, some of the answers, the objections, the rulings.

So I don't know where Mr. Sobel is going, and I'm not going to make a ruling in a vacuum. You object at the time.

I don't even know if he prepared his examination of the witness yet.

Have you?

MR. SOBEL: Not to the extent that I have questions written out. I rarely do that as a matter of my practice.

THE COURT: So you really have to wait, Mr. Kim, and I will entertain those -- if he goes too far afield, I'll sustain any objection that you make.

MR. KIM: I understand, your Honor.

I just want to clarify. In your order you mention that there would be enjoined from making references to the lawsuit itself.

Does that include whether the lawsuit was settled, how much the lawsuit settled for, things of that nature, because I believe in People versus Smith --

THE COURT: Did it settle or is it pending?

MR. KIM: I believe there was a settlement.

People versus Smith actually states they cannot make mention of any lawsuits, any settlements, especially if there was no admission of wrongdoing and things of that nature, and that's why I just wanted to make sure we are in line with the Court of Appeals.

I want to make sure the Court is aware that in the Lopes matter, there was a lot of sustained objections where questions were made to the doctor, are you aware that there was an allegation of X, Y, Z. I just want to make sure that defense counsel be mindful that those types of questions should not be permitted in this instance.

They can ask Dr. Gerling, did you do X, Y, Z, but are you aware there was an allegation of X, Y, Z.

MR. SOBEL: Your Honor --

THE COURT: Wait, wait, wait. Let him finish.

MR. KIM: That would be a back door of way of essentially referencing this lawsuit that shouldn't have been referenced in the first instance.

MR. SOBEL: Frankly, your Honor, I take offense

when the plaintiff's attorneys tells me what to do.

Your Honor will rule upon my questions as proper or improper. I am admonished if I go too far. If I don't do something in line with prevailing case law, I am sure your Honor will tell me, but I do not need Mr. Kim to instruct me or to be asked to give him my questions beforehand.

THE COURT: Well, he is not asking for that, but he is asking for some clarification and I think we gave him some clarification.

But I am not bound by that Suffolk County case.

MR. KIM: Right.

THE COURT: I followed it, but whether or not make the same rulings, I can't tell you. I may, I may not. It depends on what the question -- how it's posed and we will wait, and then you will make your objection.

But you will be able to go into him, into his background rather, and to try to impeach his credibility.

MR. KIM: Right, your Honor. But a bell that has been rung cannot be unrung in front of the jury even if we instruct the jury.

THE COURT: It is going to be rung because he caused it to be rung.

MR. KIM: Dr. Gerling did not cause it to be rung.

THE COURT: And that's a construction you wish to place upon him. A bell ringing, we are going to unring it at the trial.

Quite frankly, just among us, I am very much anticipating his testimony because what I know about his background is disgraceful.

Disgraceful.

And I am going to give them a lot of leeway so that the jury understands the truth, which is what the trial is designed to reveal.

The truth.

MR. KIM: But, your Honor --

THE COURT: We are going to stop hiding behind legalities and fictions. I am going to unravel him at this trial.

I just want you to be aware.

I am going to be very hard on him because I am sick and tired of certain medical people who come in here and who with unclean hands, mind you, and try to pull off what he is trying to do here.

I'm insulted by it. He is insulted by something; I am insulted by Dr. Gerling. And we'll see how it goes. I'm going to be very fair to all of you, but I am not going to let him off the hook because he doesn't deserve to be let off the hook and to be

presented to this jury like he's some kind of an expert medical person, because to me he is bordering on criminality.

MR. KIM: But, your Honor --

THE COURT: Your Honor, nothing. You know how I feel about it.

MR. KIM: I understand, your Honor.

THE COURT: If you don't like it, settle the case. He is going to be cross examined to the "T." And I am going to allow it.

I might even ask him some questions myself to expose his true background, if Mr. Sobel doesn't do it.

MR. KIM: But, your Honor, now we are refocusing the case from the trial of my client over to Dr. Gerling?

I mean, that's clearly --

THE COURT: No. We are talking about Dr. Gerling's credibility. And, you know what, he doesn't have much credibility in my opinion, but that's for Mr. Sobel and for Mr. Kritzer to reveal.

MR. KIM: But, your Honor, you just said on the record that you are going to expose the truth about Dr. Gerling?

THE COURT: Yes. Through the cross examination of defense counsel about what he does, and the bad acts he has committed.

MR. KIM: But the probative value of that has nothing to do with this case, your Honor. It's prejudicial to my client's case.

THE COURT: Maybe she should have gone to a different doctor.

Who sent her to Dr. Gerling, you?

MR. KIM: Her physician did, your Honor.

THE COURT: They are all in cahoots, and put that on the record. That's my ruling.

Get the 30 people in here. We'll continue.

I suggest you settle this case.

MR. KIM: I am going to make a phone call, your Honor.

(Whereupon, at this time, jury selection resumes.)

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THE ABOVE IS CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

VICTORIA A. BIELICO
Senior Court Reporter

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