

FILED

OCT 23 2018

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J.S.C.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-6570-17

GARY STAVIS,

Plaintiff,

vs.

HUDSON GROUP (HG) RETAIL, LLC,
WILLIAM WOLF, ADRIAN BARTELLA
and JOHN DOES 1-5,

Defendants.

Civil Action

denying
**ORDER COMPELLING PLAINTIFF TO
SUBMIT TO A RULE 4:19
EXAMINATION**

This matter having come before the Court upon the application of Epstein Becker & Green, P.C., attorneys for Defendants Hudson Group (HG) Retail, LLC, William Wolf, and Adrian Bartella ("Defendants"), on notice to Stephen Roger Bosin, Esq., attorney for Plaintiff Gary Stavis, by way of motion, seeking an Order to compel Plaintiff to submit to a Rule 4:19 examination by Defendants' vocational expert pursuant to Rule 4:23-5(c), and for good cause shown;

IT IS on this 23rd day of October 2018;

ORDERED:

1. Defendants' motion to compel Plaintiff to submit to a Rule 4:19 examination by Defendants' vocational expert is hereby GRANTED. *Denied*

2. ~~Plaintiff shall submit to an examination by Edmond Provder on or before~~
October 30, 2018.

3. ~~Plaintiff is required to pay Defendants' attorneys' fees and costs in~~
connection with the present motion. Defendants shall submit within ten (10) business days a
certification of counsel as to fees and costs incurred in its motion, along with a form of order for
the award of same.

4. A copy of this Order shall be served upon all counsel of record within seven
(7) days of receipt hereof.



Honorable Rachelle Lea Harz, J.S.C.

Opposed ☒

Unopposed ☐

see Exhibit attached

RIDER

Gary Stavis v. Hudson Group (HG) Retail, LLC, et al.

BER-6570-17

Before this court is defendants' motion to compel the plaintiff, Gary Stavis, to submit to an examination by defendants' vocational expert, Edmond Provder, pursuant to R 4:23-5(c).

BACKGROUND

On September 26, 2017, plaintiff filed his complaint against defendants Hudson Group Retail, LLC, William Wolf, and Adrian Bartella. The complaint includes claims for wrongful termination in violation of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:12-1, et seq.

Defense counsel argues that plaintiff's complaint seeks recovery for, *inter alia*, "emotional distress and physical distress damages". In support of their request for an examination by Mr. Provder, defendants rely on the premise that plaintiff has placed his mental and physical condition in controversy by seeking recovery for "emotional distress and physical distress damages". Further, defense counsel suggests to this court that plaintiff's vocational expert expresses opinions about plaintiff's mental and emotional conditions.

On May 10, 2018, plaintiff served defendants with his expert vocational evaluation and earning capacity analysis prepared by, Kincaid Wolstein, which this court has reviewed. In this report, Mr. Wolstein states that he conducted an in-depth interview to obtain relevant background information regarding Mr. Stavis's age, education, present employment and earnings status, past employment and earnings experience, and current work and life status. Defense counsel argues that to prepare a report equivalent and responsive to plaintiff's expert report, Mr. Provder must conduct his own examination of plaintiff. There is no issue before this court

regarding the qualifications of Mr. Provder as a vocational expert. Plaintiff's counsel objects to an in-person examination by Mr. Provder arguing that such an examination is not provided for pursuant to R 4:19 as Mr. Provder is not a medical expert, and in addition, contrary to the representations of defense counsel, plaintiff's vocational expert report expresses no opinions as to plaintiff's mental or physical condition.

This court notes defense counsel does not cite to any New Jersey case law or to any comment to R 4:19 substantiating the position that a defense vocational expert is entitled to an examination of a plaintiff.

ANALYSIS

This court seeks to ensure that a level playing field exists with regard to vocational expert testimony in this litigation. This court finds that despite the representations of defense counsel, plaintiff's vocational expert report does not render any opinions regarding the emotional or mental status of the plaintiff or how his emotional or mental status affects his employability. A review of Mr. Wolstein's report confirms he renders no such opinion.

This court inquired as to what information Mr. Provder sought by way of interview that he could not obtain from the discovery already obtained in this litigation, including but not limited to, answers to interrogatories, the two-day deposition testimony of the plaintiff, Mr. Wolstein's report, as well as the deposition that will be taken of Mr. Wolstein.

The response was that Mr. Provder wanted to have the same ability to interview the plaintiff as did plaintiff's vocational expert. This court does not find that argument compelling. First, there is no court rule regarding interviews by an adversarial vocational expert and second, the defense is not entitled to an examination pursuant to R 4:19 which is specifically directed to physical and mental examinations. Moreover, in the context of a defense physical or mental

examination, the examining medical provider performs a clinical examination. No such equivalent examination could be conducted by Mr. Provder. Mr. Provder is not entitled to re-question the plaintiff about employment history and employment efforts which have been testified to by way of deposition and already provided through discovery. There has been no specific information given to this court delineating what Mr. Provder wishes to question the plaintiff about that would be required for his report to be complete.

Mr. Provder is entitled to have a relevant questionnaire completed by the plaintiff to ensure that Mr. Provder has all the information he believes necessary to provide a comprehensive vocational expert report.

In sum, this court has not been provided with any definitive answer as to what information Mr. Provder wishes to obtain by way of interview that he does not already have access to via discovery served in this case and his own questionnaire.

Plaintiff's vocational expert has not rendered any opinions regarding the emotional or mental status of the plaintiff or how his emotional or mental status affects his employability. Plaintiff's counsel has also represented that at no time in the future will such an opinion be rendered by Mr. Provder.

Accordingly, based on the foregoing, defendants' motion seeking an order of this court to compel plaintiff to undergo an in-person examination by their defense vocational expert is DENIED.