

John M. McConnell, Esq. [#028152006]

Earyn J. Edwards, Esq. [#245852017]

Goldberg Segalla LLP

Mailing Center: PO Box 580, Buffalo, NY 14201

301 Carnegie Center, Suite 200

Princeton, NJ 08540

609.986.1300

609.986.1301 (fax)

Attorneys for Defendants BJ's Wholesale Club, Inc. and Watchung UE, LLC

<p>ELMA THOMAS and LENFORD THOMAS</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>BJ'S WHOLESALE CLUB, INC., WATCHUNG UE, LLC., ET AL.</p> <p style="text-align: center;">Defendants.</p>

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. MID-L-5518-19

**CERTIFICATION OF JOHN M.
MCCONNELL IN SUPPORT OF MOTION
TO COMPEL DISCOVERY FROM
PLAINTIFFS', PURSUANT TO R. 4:23-5(c)**

I, John M. McConnell, Esq., upon my oath, do hereby state:

1. I am an attorney at law in the State of New Jersey and a Partner at the law firm of Goldberg Segalla LLP, attorneys for Defendants BJ's Wholesale Club, Inc. and Watchung UE, LLC ("Moving Defendants") and am familiar with the matters herein. This Certification is in support of Moving Defendants' Motion to Compel discovery, pursuant to R. 4:23-5(c).

2. This matter arises from an alleged incident that Plaintiff Elma Thomas ("Plaintiff") claims occurred on July 29, 2018 at the BJ's Wholesale Club located at the 1601 Route 22, Watchung, New Jersey. See Plaintiffs Elma Thomas and Lenford Thomas' ("Plaintiffs") Complaint attached as Exhibit "A".

3. Plaintiff alleges that as a result of the carelessness, negligence and recklessness of the Defendants, she was injured in a premises liability accident at BJ's Wholesale Club. See Ex. "A", First Count.

4. Plaintiff claims that as a result of the carelessness, negligence and recklessness of Defendants, she was caused to sustain severe personal injuries, for which she has been caused great pain and suffering to her mind and body, was and will in the future be obliged to expend great sums of money for medical aid and attention and has sustained economic loss. See Exhibit "A," First Count, ¶5.

5. This matter was removed to the United States District Court for the District of New Jersey on August 22, 2019 and subsequently remanded on April 13, 2020.

6. Defendants noticed the deposition of Plaintiff to be done virtually for April 16, 2020. See Exhibit "B", Notice of Deposition.

7. Due to the Pandemic, we sought to take this deposition virtually, **where our client would incur all court reporting and virtual deposition fees and costs** for this deposition. Specifically, at our client's cost, our court reporter would provide Plaintiff with a "Flight Pack" that contains an iPad with Hot Spot Stand, Charging Cord, and Bluetooth Speaker, so that Plaintiff would have anything necessary for this deposition to occur, from a technological standpoint. See Exhibit "C".

8. Then, after receiving the "Flight Pack", our Court Reporter would do a "test" with the Plaintiff before the deposition to make sure that the technology worked properly. Id.

9. Moving Defendants advised that its Court Reporter would ship the "Flight Pack" out to the Plaintiff ahead of time and provide a prepaid return-shipping label for the Plaintiff's ease and convenience. Id.

10. Nevertheless, Plaintiffs' counsel unilaterally canceled Plaintiff's deposition on April 10, 2020 and advised that she did not wish to have her client's deposition conducted virtually.

11. This is important because on April 24, 2020, the Court issued a Second Omnibus Order indicating that:

Accordingly, it is **ORDERED** that effective immediately:

(7) ALL COURTS

- a. To the extent practicable through May 31, 2020, depositions should continue to be conducted remotely using necessary and available video technology, and in those circumstances court reporters may administer and accept oaths remotely;

See April 24, 2020 Order of the Supreme Court, as Ex. "D".

12. Per the Omnibus Order, we have followed-up with counsel for Plaintiffs to re-schedule the virtual deposition to a date amenable to both parties. Plaintiffs' counsel has failed and refused to agree to a virtual deposition. See Exhibit "E", Correspondence Dated April 23, 2020.

13. This is a relatively routine premises liability matter, where Moving Defendants estimate or approximate introducing one exhibit at the deposition, which is the incident report for this alleged incident. The incident report has been produced in discovery and is approximately 2-3 pages.

14. Thus, per the Order of the Supreme Court, it is "**practicable**" for Plaintiff to appear for her deposition virtually, with all virtual deposition costs to be incurred by Moving Defendants.

15. Moving Defendants are entitled to take Plaintiffs' deposition pursuant to R. 4:14-1, which indicates:

4:14-1. When Depositions May Be Taken

Except as otherwise provided by R. 4:14-9(a), after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon

oral examination.

See R. 4:14.

16. The current discovery end date is June 17, 2020. Although it will likely be extended due to the pandemic, Moving Defendants need Plaintiff's deposition immediately in order to evaluate Plaintiff's damages claims, understand how the accident happened and determine whether additional fact witnesses need to be deposed and what medical experts must be retained.

17. Moving Defendants have been prejudiced, and will continue to be prejudiced, without the outstanding deposition of Plaintiff.

18. At this time, the moving defendants require an Order from this Honorable Court, compelling the deposition of the Plaintiff in order to ensure that Plaintiff's deposition goes forward in a timely manner.

II. PLAINTIFF'S OUTSTANDING ANSWERS TO DISCOVERY

1. In discovery, Defendants sought more specific responses to Plaintiffs' answers to its discovery requests. The more specific responses that Defendants sought included the amounts expended for medical care, amounts owed for medical care, if any, as well as the amount of any lien that is being asserted by any healthcare provider for any treatment Plaintiff underwent in connection with the incident that is the subject of her Complaint ("medical bill and lien information"). See Ex. "F".
2. In a personal injury matter, the medical bill and lien information is reasonable calculated to lead to the discovery of admissible evidence, under R. 4:10-2(a).
3. To date, Plaintiffs have failed and refused to provide the medical bill and lien information, despite follow-ups.
4. Defendants need Plaintiff's medical bill and lien information in order to evaluate this matter for arbitration and trial, and also to prepare for Plaintiff's deposition.

5. The current discovery end date is June 17, 2020. Although it will likely be extended due to the pandemic, Plaintiff's medical bill and lien information is relevant to Plaintiff's personal injury claims, and Moving Defendants need Plaintiff's more specific answers to discovery so that it is not prejudiced at the arbitration or trial of this matter.
6. In light of the foregoing, Moving Defendants respectfully request this Honorable Court enter an Order compelling Plaintiff's medical bill and lien information.
7. Moving Defendants set forth that they have complied with their discovery obligations and this motion is therefore ripe for consideration.

I hereby certify that the foregoing statements made by me are true to my knowledge based on the information I have at this time. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

GOLDBERG SEGALLA LLP
Attorneys for Moving Defendants

Date: May 15, 2020

By: s/John McConnell
JOHN M. MCCONNELL, ESQ.