

NAGEL RICE, LLP

COUNSELLORS AT LAW

BRUCE H. NAGEL*
JAY J. RICE*
ROBERT H. SOLOMON
DIANE E. SAMMONS^o
LORI I. MAYER^o
RANDEE M. MATLOFF
ANDREW L. O'CONNOR
GREG M. KOHN^o
SUSAN F. CONNORS
BRADLEY L. RICE^o

HARRY A. MARGOLIS
(1928-2002)

103 EISENHOWER PARKWAY
SUITE 103
ROSELAND, NEW JERSEY 07068
(973) 618-0400
FAX: (973) 618-9194
WWW.NAGELRICE.COM

230 PARK AVENUE
NEW YORK, NY 10169
(212) 551-1465

PLEASE REPLY TO
ROSELAND OFFICE

ANDREW I. PEPPER
MICHAEL J. PARAGANO^o
SCOTT M. JACOBSON^o
EMMA A. MCELLIGOTT

*CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY
^oMEMBER OF NJ & NY BARS

September 1, 2022

Via eCourts

Hon. Louis S. Sceusi J.S.C.
Superior Court of New Jersey
Morris County Courthouse
Washington and Court Streets
Morristown, NJ 07960

Re: Kanarek v. Barisone et.al
Docket No.: MRS-L-2250-19

Dear Judge Sceusi:

We represent Plaintiff in the above matter. Please accept this letter in opposition to defendant Sweetgrass Farms, LLC ("Sweetgrass") motion to compel the in person deposition of Plaintiff, and Defendant Barisone's cross motion, and in support of Plaintiff's cross motion for a protective order. These motions are currently returnable before Your Honor on September 16, 2022. This Court should deny Defendants' motion.

FACTUAL SUMMARY

Defendant Michael Barisone (hereinafter "Barisone" or "Defendant"), a medalist in the 2008 Summer Olympic Games in Beijing, agreed to train Plaintiff and her horses at his Long

Valley equestrian center. However, the relationship quickly soured, and following a long campaign of harassment and intimidation against Plaintiff, at approximately 2:15 pm on August 7, 2019, Defendant confronted Kanarek at the farmhouse at 411 W. Mill Road, Long Valley, New Jersey. During that conversation, Barisone took out a hand gun and shot Karanek in the chest multiple times at point-blank range.

Barisone was arrested, charged with multiple counts of attempted murder and weapons offenses. He recently went to trial, where he was found guilty of attempted murder of Plaintiff, but not criminally responsible due to insanity. In other words, the jury determined that he did attempt to murder Plaintiff, but that because he is so mentally unstable that he was not criminally responsible for his attempt at murder.

It is undisputed that Defendant Barisone committed an assault and battery against Plaintiff, and also undisputed that Plaintiff suffered grievous injuries as a direct result of this assault and battery.

LEGAL ARGUMENT

Defendants seek to compel the in-person deposition of Plaintiff. Defendants offer no legitimate reason for why this deposition cannot occur virtually. In fact, as the motion papers make clear, this is just a further part of Defendant's campaign against Plaintiff.

As a threshold matter, as the court is well aware, during the last two and a half years, all depositions have been conducted virtually. There is no reason why this deposition should be treated differently. Remote depositions are the default currently because they are more efficient, less expensive, and allow for greater availability of dates.

Plaintiff resides out of state in Florida. There is no reason why Plaintiff's deposition needs to occur in person. The time and cost savings alone from doing a remote deposition far outweighs any alleged detriment from not conducting the deposition in person. In fact, Defendants only objection is that there are extensive exhibits which are anticipated to be used, and requiring the witness to look at many documents over Zoom is not practical. That is no objection at all.

As this Court is aware, litigants have been trying cases over Zoom and submitting exhibits electronically. In fact, my office recently tried a case in Morris County, with a remote jury, with extensive paper exhibits. Parties in all cases have also been conducting depositions with hundreds of exhibits remotely.

Moreover, court reporting companies provide a way to upload the exhibits to their system prior to the deposition and are willing to assist the parties in showing those exhibits on screen during the deposition.

This is especially true here, where there are legitimate COVID

concerns, given Plaintiff's weakened physical state caused directly by Defendants. In this case, it is undisputed that Defendant Barisone shot Plaintiff, in the lung. This severely injured her respiratory function. Not only is there a COVID concern of the actual deposition (being in close physical proximity for what Defendants describe as hours and hours of questioning) but there are also the risks attending of flying up for the deposition, and the risks incurred in catching COVID while traveling.

Defendants have failed to establish that there is any prejudice or burden from proceeding with a remote deposition. On the other hand, it would be more costly, time consuming, burdensome and potentially life threatening for the witness to proceed in person.

This is especially true here, where defense counsel indicate that they intend to depose Plaintiff for several days. As a threshold matter, there is no need for Plaintiff to be deposed for several days. This is a relatively straight forward case, where Plaintiff was shot by Defendant. If, after the conclusion of the first day, Defendants feel like they need additional time, it can be addressed by the counsel at that point, and if it cannot be resolved by counsel, it can be raised by the Court at that point.

However, if Defendants intend to attempt to take multiple days of deposition of Plaintiff, it just further supports why this should be done remotely. The cost, expense, and difficulty will

just be multiplied for each day of deposition.

Defendant's other points in their motions do not even warrant response. Numerous slanderous statements are included in their motion, which are not germane to their motion, which clearly show the motivation behind the motion.

For example, Mr. Deininger attaches a photograph from Ms. Kanarek's facebook page in support of his cross motion. The picture is of a horse. It is difficult to divine why exactly a picture of a horse is probative of in support of Defendant's motion, except possibly to point out that Defense counsel is continuing to stalk Plaintiff's personal facebook page. It certainly is not germane to any issues in the motion, but telling that it would be included.

For further example, the moving papers indicate that subpoenas were necessary to compel Ms. Kanarek's attendance at the criminal trial of Mr. Barisone. This too is completely untrue, of course Ms. Kanarek voluntarily attended the criminal proceedings of the man who attempted to murder her.

With regard to the location of the depositions, if it were to be conducted in person (for the reasons submitted above we respectfully submit that it should be done remotely), it would be done at our office. As counsel is aware, the standard practice in New Jersey is that the depositions of clients are done in the offices of the attorneys representing them.

Given these considerations, the Court should deny Defendants motion, so that the deposition can occur remotely.

Respectfully,

Bruce H. Nagel

BRUCE H. NAGEL

cc: All Counsel (via E-File)