

**Dixon v 250 W. 137th St. Realty Corp.**

2007 NY Slip Op 30474(U)

March 27, 2007

Supreme Court, New York County

Docket Number: 0403904/2006

Judge: Barbara R. Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. **BARBARA R. KAPNICK**

PART 12

Justice

DIXON, TERRANCE

INDEX NO.

403904/06

- v -

MOTION DATE

250 WEST 137<sup>th</sup> ST

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

PAPERS NUMBERED

**FILED**

APR 02 2007

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE DATED: \_\_\_\_\_ J.S.C.

**MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

Dated: 3/27/07

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

*[Signature]*  
**BARBARA R. KAPNICK**  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 12

-----X  
TERRANCE DIXON,

Plaintiff,

-against-

250 WEST 137TH STREET REALTY CORP.  
and DINO ROGGIERO,

Defendants.

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BARBARA R. KAPNICK, J.:

DECISION/ORDER

Index No. 403904/06

Motion Seq. No. 001

**FILED**

APR 02 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff Terrance Dixon pro se, who was allegedly assaulted by a man with a gun in the hallway of his apartment building on January 25, 2004, commenced this action against defendants 250 West 137th Street Realty Corp. and Dino Roggiere in the Civil Court, New York County, alleging claims for negligence and inadequate security.

Plaintiff now moves for an order: (i) pursuant to CPLR § 325(b) transferring the action from the Civil Court to this Court; and (ii) pursuant to CPLR § 3025(b) permitting him to serve a verified second amended complaint and verified bill of particulars in order to allege damages exceeding the jurisdictional limitation of the Civil Court.

To demonstrate his entitlement to this relief, plaintiff was "required to submit evidence showing the merits of the case, the reasons for delay in asserting the present claims, and that the increase in damages resulted from facts that only recently came to


[his] attention"; and "a physician's affirmation specifying the claimed change in the injured plaintiff's condition, any injuries which had not been considered previously, or the extent to which the condition had worsened". Cohen v. Kim, 23 A.D.3d 602 (2nd Dep't 2005). In addition, "[t]he medical evidence supporting such a motion must establish 'a "causal connection between the injury and a consistent course of treatment for the accident-caused injuries"' (citations omitted)." Barsoum v. Wilson, 255 A.D.2d 537, 538 (2nd Dep't 2005).

Although plaintiff has annexed portions of medical records stemming from treatment for psychiatric conditions he claims are causally related to the underlying assault, and indicates that his treating physician and other witnesses are willing to testify if the case should go to trial, plaintiff has not annexed an affirmation from his physician detailing any change in his condition, identifying any injuries which were not previously considered, and/or indicating the extent to which his condition has worsened.

Accordingly, the plaintiff's motion to transfer this action from the Civil Court to the Supreme Court and to amend his complaint and bill of particulars, is denied.

This constitutes the decision and order of this Court.

Dated: March 27, 2007

  
\_\_\_\_\_  
Barbara R. Kapnick  
J.S.C.