

Dimperio v Consolidated Edison Co.

2007 NY Slip Op 30634(U)

March 30, 2007

Supreme Court, New York County

Docket Number: 0402695/2005

Judge: Doris Ling-Cohan

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

PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

ROBERT DIMPERIO & JOAN DIMPERIO,
Plaintiff/s,

INDEX NO. 402795/05

-against-

MOTION SEQ. NO.

~~001~~, 002

DECISION/ORDER

CONSOLIDATED EDISON COMPANY, ARGO MGMT.
CO., LLC, GENTILE CARE DENTAL ASSOCIATES, LLP,
DR. GENE F. CAIAFA d/b/a GENTILE CARE DENTAL,
ASTORIA PARK DENTAL, LLP & DR. GENE F. CAIFA
d/b/a ASTORIA PARK DENTAL,

Defendant/s.

The following papers, numbered 1-11 were considered on this motion summary judgment (seq 001), cross-motion & motion (seq 002) to vacate a portion of this Court's prior order dated :

<u>PAPERS</u>		FILED	<u>NUMBERED</u>		
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits	_____			1, 2	5, 6
Answering Affidavits — Exhibits	_____			7, 8, 9	
Replying Affidavits	_____			10, 11	
Cross-Motion:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NEW YORK	3, 4		

COUNTY CLERK'S OFFICE

Upon the foregoing papers, defendant Dr. Gene F. Caiafa d/b/a Gentle Care Dental's motion for summary judgment pursuant to CPLR § 3212 dismissing the complaint is granted; the motion and cross-motion seeking to vacate a portion of this Court's prior order dated June 23, 2006 is granted to the extent detailed below.

Background

This action was commenced by plaintiff Robert Dimperio, a New York City Firefighter, to recover for personal injuries he allegedly sustained on June 26, 2003, while responding to an electrical fire, at 22-80 31st Street, 22-82 31st Street and 29-29 23rd Avenue, Queens, New York. [Exh. A, Notice of Motion for Summary Judgment, Complaint ¶97].

Motion for Summary Judgment by Dr. Gene F. Caiafa d/b/a Gentle Care Dental

In seeking summary judgment, defendant Dr. Gene F. Caiafa d/b/a Gentle Care Dental's maintains that there are no triable issues of material fact as to liability on its part because it did not operate a

dental practice at the subject premises and did not own, operate, manage, maintain, nor control, the premises where the accident occurred. According to Dr. Gene F. Caiafa d/b/a Gentle Care Dental, at the time of the accident, Astoria Park Dental occupied the premises pursuant to a lease entered into with Argo Management on June 2, 1998. In support, a copy of such lease and a lease extension is supplied. [Exh. E, Notice of Motion for Summary Judgment].

No party has submitted any evidence to contradict Dr. Gene F. Caiafa d/b/a Gentle Care Dental's, motion for summary judgment.

The standards of summary judgment are well settled. To grant summary judgment, it must be clear that no material or triable issues of fact are presented. *See Stillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957). The proponent of a summary judgment motion must "make a prima face showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so." *Zuckerman v. City of New York*, 49 NY2d 557 (1980).

Applying the above principles to the present case, Dr. Gene F. Caiafa d/b/a Gentle Care Dental's motion for summary judgment is granted as it has established its *prima facie* entitlement to judgment as a matter of law, which has not been opposed by any party. As noted above, neither plaintiffs, nor co-defendants have submitted any proof to contradict Dr. Gene F. Caiafa d/b/a Gentle Care Dental's submissions. Thus, as factual issues have not been raised with respect to Dr. Gene F. Caiafa d/b/a Gentle Care Dental's potential liability, the motion for summary judgment is granted.

Cross-Motion and Motion to Vacate a Portion of this Court's June 23, 2006 Order

Defendant Dr. Gene F. Caiafa d/b/a Gentle Care Dental has moved, and defendants Astoria Park Dental, LLP and Dr. Gene F. Caifa d/b/a Astoria Park Dental have cross- moved to, *inter alia*, vacate the portion of this Court's June 23, 2006 which required that Dr. Gene F. Caiafa provide the parties with his date of birth, social security number and home address (contained in paragraph "5" of the

June 23, 2006 order).

Upon review of the submitted papers, the above referenced portion of the June 23, 2006 order is amended to reflect the deletion of the requirement that Dr. Gene F. Caiafa supply his date of birth and Social Security number. Defendant Argo Management, the party seeking such information, asserts no basis for the discovery of such information, as there has there been no showing of relevance. Thus, such private information is deemed non-discoverable in this litigation. *See Parker v. State of New York*, 269 AD2d 255 (1st Dept 2000)(Correctional officers' Social Security numbers contained in incident reports, proper for redaction); *Bibeau v. Cantiague Figure Skating Club, Inc.*, 294 AD2d 525 (2nd Dept 2002)(Social Security number to be redacted from income tax returns); *Weingard v. City of New York*, 9 Misc 3d 891 (Sup Ct, New York County 2003)(Social Security number and other personal information redacted from personnel records); *Meyerson v. Prime Rlty. Services, LLC*, 7 Misc 3d 911 (Sup Ct, New York County 2005)(Social Security number treated as "private and confidential information").

With respect to the portion of the order that requires Dr. Caiafa's home address, as a party to this lawsuit, such information is discoverable. *See* CPLR §3118¹. Moreover, movant/cross-movant do not allege that disclosure of Dr. Caiafa's home address "would pose an unreasonable risk to [his] health or safety", as required by CPLR §2103-a.²

As such, within 20 days of service of a copy of this order with notice of entry, Dr. Gene F. Caiafa

¹ In an effort to expedite the completion of the discovery process in this case, the Court will dispense with the formal demand provisions outlined in CPLR §3118. The Court notes that a note of issue was filed in this case on or about February 6, 2006, and that this case is beyond the Court System's standards and goals with respect to discovery.

² CPLR §2103-a is titled "Confidentiality of addresses in civil proceedings" and provides in relevant part, as follows:

"(a) Notwithstanding any other provision of law, in any civil proceeding...the court may, upon its own motion or upon the motion of a party, authorize any party to keep his or her residential and business address...confidential from any party...where the court makes specific findings on the record supporting a conclusion that disclosure of such addresses...would pose an unreasonable risk to the health or safety of a party..."

shall supply the parties with his home address.

Accordingly, it is

ORDERED that the motion for summary judgment by defendant Dr. Gene F. Caiafa d/b/a Gentle Care Dental is granted and the complaint and any and all cross-claims are severed and dismissed, as against such defendant; it is further

ORDERED that the remainder of this action shall continue as against all remaining defendants; it is further

ORDERED that the motion and cross-motion to vacate a portion of this Court's June 23, 2006 order, is granted to the extent detailed above; and it is further

ORDERED that, within thirty days of entry, defendant Dr. Gene F. Caiafa d/b/a Gentle Care Dental shall serve a copy of this decision/order upon all parties, with notice of entry; and it is further

This constitutes the decision and order of this court.

Dated: 3/30/07


DORIS LING-COHAN, J.S.C.

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NON-FINAL DISPOSITION

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