

Lockhart v 116 Assoc. LLC

2007 NY Slip Op 30844(U)

April 12, 2007

Supreme Court, New York County

Docket Number: 0107342/2005

Judge: Emily Jane Goodman

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

EMILY JANE GOODMAN

PRESENT: _____
Justice

PART 17

Index Number : 107342/2005

INDEX NO. _____

LOCKHART, SOILO

MOTION DATE _____

vs
116 ASSOCIATES

MOTION SEQ. NO. _____

Sequence Number : 001

MOTION CAL. NO. _____

VACATE

this motion to/for _____

PAPERS NUMBERED

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

is decided per attached

FILED

APR 23 2007

COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 4/19/07

EMILY JANE GOODMAN ^{J.S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X

SOILO LOCKHART and YOVANNY
POPOTEUR,

Plaintiffs,

Index No. 107342/05

-against-

116 ASSOCIATES LLC.,

Defendants.

-----X

116 ASSOCIATES LLC

Third-Party Plaintiff,

-against-

BLUE SMOKE, LLC.

Third-Party Defendant.

-----X

EMILY JANE GOODMAN, J.S.C.:

In this Labor Law action, Lockhart, an employee of Blue Smoke, LLC was allegedly injured while standing on a large planter cleaning the windows of his employer's restaurant. The restaurant was a tenant in Defendant 116 Associates LLC's ("116") building. Defendant moves for an order vacating Plaintiffs' request for the deposition of 116 on the basis that Defendant already produced Adam Smith, an employee of Smith Affiliates Management Corp. Plaintiffs oppose the motion, arguing that they are entitled to take the deposition of 116 because Smith is not an officer, member or employee of 116. Plaintiffs further argue

that the deposition is warranted because Smith was not involved in negotiating a lease between 116 and Plaintiff's employer, did not know when 116 purchased the building, did not observe any employees of Blue Smoke cleaning the windows, nor did he know the type of equipment used, nor have familiarity with the Labor Law.

116's motion is granted. A further deposition is not warranted on the basis that Smith was not an officer, member or employee of 116. Neither party has submitted any cases on point. The cases cited by Defendant only address the issue of whether an additional deposition is warranted because the witness, an officer or an employee of a party, has insufficient knowledge. Here, Smith is not an officer, member or employee of 116. Rather, he is employee of a separate company that acts as the managing agent for the building.

The Court has not been able to find much guidance on this issue. Plaintiff has not attached any proof that it designated Jeffrey Smith (a member of 116) to be deposed in accordance with CPLR 3106 (d), which provides that:

A party desiring to take the deposition of a particular officer, director, member or employee of a person shall include in the notice or subpoena served upon such person the identity, description or title of such individual. Such person shall produced the individual so designated unless they have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified" (emphasis added).

Notably, the provision specifies that "another individual"

may be substituted, and does not require production of "another individual of a person." Accordingly, it appears that this provision allows a corporation to designate a person, who is not an officer, member or employee of that corporation, for deposition. Moreover, the Court can think of no reason why someone from a party must be produced, unless the person produced has insufficient knowledge.

A further deposition is not warranted on the basis that Smith had insufficient knowledge. Ownership was admitted in 116's answer. The terms of the lease (providing that "Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law of the Rules of the Board of Standards and Appeals") speaks for itself, and, in any event are not relevant to whether the owner violated its obligations under the Labor Law. Thus, discovery regarding lease negotiations are irrelevant. It is similarly irrelevant whether the tenant restaurant agreed to comply with, or understood, or received copies of, the Labor Law, because the owner's obligations are not dependant on those factors. The fact that Adam Smith may not have been familiar with Labor Law is also irrelevant. Adam Smith did however provide relevant testimony. He testified that neither 116, nor his employer (the managing agent) provided Blue

Smoke employees with any window cleaning equipment.¹ Thus, it is irrelevant whether Smith knew the type of equipment used by employees where, in this case, he testified that the owner did not provide any equipment to Lockhart. Accordingly, it is hereby

ORDERED that the motion is denied, with leave to renew in the event that a summary judgment motion is filed and anything in 116's papers would indicate that a further deposition is warranted.

This Constitutes the Decision and Order of the Court.

Dated: April 12, 2007

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED

APR 23 2007

COUNTY CLERK'S OFFICE
NEW YORK

¹Although the issue of whether 116 filed an Owner's Statement in accordance with 12 NYCRR 21 is relevant, Plaintiff never asked this question of Adam Smith, who may have had knowledge on the issue.