

Echevarria v City-Wide Sec. Servs., Inc.

2007 NY Slip Op 31475(U)

June 4, 2007

Supreme Court, New York County

Docket Number: 0105429/1995

Judge: Nicholas Figueroa

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

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

PRESENT: HON. NICHOLAS F. SUTHERLAND
Justice

PART 46

Echevarria, R

INDEX NO. 105 42995

MOTION DATE 2/22/07

MOTION SEQ. NO. 07

MOTION CAL. NO. _____

- v -

City-wide

The following papers, numbered 1 to _____ were read on 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 respectfully referred to Justice

FILED
JUN 06 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/22/07 *CS*
~~June 9, 2007~~

[Signature]
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: PART 46

RAYMOND ECHEVARRIA and
VICTORIA ECHEVARRIA,

Index No. 105429/95

Plaintiffs,

**DECISION
AND ORDER**

- against -

CITY-WIDE SECURITY SERVICES, INC.

Defendent.

FILED
JUN 06 2007
NEW YORK
COUNTY CLERK'S OFFICE

Nicholas Figueroa, Justice:

Plaintiffs seek an order compelling defendant to respond to its March 31, 2006 discovery demand. Plaintiffs allege that the demand is for items of discovery that remain outstanding from the discovery the court ordered in its September 12, 2005 order. That order directed defendant to provide plaintiffs with a copy of defendant's contract with the New York and New Jersey Port Authority, the date defendant's New Jersey security license was terminated, the name of defendant's supervisor at the World Trade Center parking facility in January, 1993, and the names of defendant's supervisory personnel whom the Port Authority recommended for discharge, subject to the terms of a confidentiality agreement, and a list of cases arising out of the January, 1993 World Trade Center bombing in which defendant is also a defendant.

Plaintiffs now assert that they are entitled to:

- "a. The court and county of the three cases listed in para. 1 of defendant's discovery response in which defendant City Wide is a party defendant in other cases;
- b. All deposition transcripts and all non-privilege documents from those cases;

c. EBT of WTC supervisor Pat Ventriglia; or if no longer employed, his last known address.”

Although plaintiffs demand the courts and counties where the three cases are venued, plaintiffs state that they already have the information. However, plaintiffs fail to say why, in light of this information, they are persisting with their demand. Moreover, the court’s prior order did not direct defendant to furnish this information; nor, did the court direct production of the discovery material from these cases or a deposition of Ventriglia.

Plaintiffs challenge defendant’s objection to producing the deposition transcripts and other “non-privileged” documents from the three cases. Defendant objected to the demand, saying it was “vague, ambiguous and ill-defined. It is also objectionable to the extent it appears to call for the production of materials that are patently not relevant to the claims alleged here.”

Plaintiffs characterize defendant’s objection as “totally conclusory” and “without substance”. Plaintiffs argue that the objection is intended to obstruct fair discovery.

Continuing, plaintiffs argue that because defendant is also a defendant in three other cases arising out of the 1993 bombing, in which negligent security claims were made, “all pleadings deposition transcript and discovery material will be necessary and material in this action.”

Finally, plaintiffs assert that they seek to depose Pat Ventriglia, one of defendant’s officers; however, because defendant asserts he is no longer in its employ, they claim they are entitled to his last known address.

In its opposition papers on this motion, defendant opposes the demand for the discovery material in the three other actions in which it is a defendant. Defendant argues that

it had no duty to inspect cars entering the World Trade Center parking lot; that it had not contracted to undertake this duty and its contract did not authorize such inspection.

Defendant argues that the demanded material is irrelevant to the instant action and that the material is “not likely to lead to discoverable information” as the cases involve separate plaintiffs, each claiming different injuries. Therefore, the depositions have no bearing on the instant case. It notes that one of the persons deposed, in *Knapp v. Ogden and City-Wide*, is the widow of a person killed in the blast. This person could have no knowledge of the factors giving rise to the explosion.

Defendant next argues that the pleadings could not give plaintiffs any relevant information and that if the plaintiffs want the information, they can simply make copies in the County Clerk’s files.

Defendant notes that there is a confidentiality agreement between the Port Authority of New York and New Jersey and the plaintiffs’ Steering Committee in the action, recently tried by this court on the issue of liability, that makes various discovery items subject to its provisions. Plaintiffs, according to defendant, have not agreed to abide by the agreement’s provisions.

Defendant agrees to search its records for Ventriglia’s last known address. Defendant notes that it is “essentially no longer in business...”, and that plaintiffs are seeking Ventriglia’s address ten years after they commenced this action. Defendant promises, however, to provide the information “immediately”, if it locates it.

In reply, plaintiffs state that, “The rules of discovery are broad and defendant complains that our demands are ‘completely irrelevant’. This makes no sense. The three

cases in which discovery is sought are all World Trade Center cases against the same defendant, City-Wide.”

Plaintiffs next argue that it was defendant’s burden to obtain Port Authority consent under the confidentiality agreement between it and the plaintiff’s Steering Committee.

Plaintiffs also submit, for the first time, a letter from defendant’s attorney dated January 26, 2007. Defendant’s attorney sent this letter after plaintiffs served their motion. The letter states that defendant would provide the following documents from the three other actions:

“Plaintiff’s Summons and Complaint; Defendant’s Answer; and, All of Defendant’s Responses to Discovery Demands.”

However, the letter stated that in the *Kirkpatrick* case, there was no discovery, other than a copy of the contract between defendant and the Port Authority.

Defendant’s stated it would not furnish the bills of particulars in the three cases, as these bills only provide information that “is private to the plaintiff and, thus, could not possibly be relevant here.”

The letter stated that it deposed only one of the plaintiffs in the three cases. That case was the *Knapp* case defendant referred to in its opposition papers. Defendant’s letter stated that the deposition was of decedent’s widow, concerning the decedent’s personal information, and so had no bearing in the instant case.

Defendant sates that the only deposition taken of its employee, Feliciano, was taken by the plaintiffs’ Steering Committee and is subject to the Confidentiality Agreement. The defendant stated that because the document was confidential, it is not subject to disclosure until the Port Authority is notified and the plaintiffs agree to abide by the confidentiality

agreement.

Finally, the letter stated that defendant would provide Ventriglia's last known address, if it could locate it.

The items defendant agreed to provide in its January 26, 2007 letter are sufficient to satisfy plaintiff's discovery demand. Plaintiffs have demonstrated no need or entitlement to any other material.

Plaintiffs already know the identity of the courts in which the three other actions are pending; therefore, there is no need for disclosure.

Plaintiffs are entitled to Ventriglia's last known address, however, because of the length of time that has elapsed between his employment with defendant and the demand, the court cannot direct defendant to do anything more than conduct a diligent search for the information and furnish it to plaintiffs, if it is found.

Because defendant agreed, its current opposition notwithstanding, to furnish plaintiffs with the summonses, complaints, answers and its responses to discovery demands in the three cases against it, it must comply with that promise by furnishing the material within twenty days of service on it of a copy of this decision and order with notice of entry.

Plaintiffs' demand for the bills of particulars in the three actions is denied. Those documents can have no bearing on the instant action, as they involve a description of injuries to other plaintiffs.

Plaintiffs are not entitled to the transcript of Feliciano's deposition. The document is subject to the terms of a confidentiality agreement that plaintiffs have not signed. There is no merit to their argument that defendant had the burden of securing Port Authority

consent to the release of the transcript. If plaintiffs want the transcript, they must enter into an agreement with the Port Authority before seeking it.

The court notes that there was an extensive trial involving the Port Authority's liability in the World Trade Center bombing. The information revealed at that trial, which is now public knowledge, is that the Port Authority made all decisions involving security measures. The Port Authority determined that vehicles entering the complex would not be searched. Defendant in this case was not shown to have been a part of the decision making process and did not control the security measures that would be taken. Plaintiffs should be guided by the evidence adduced at that trial.

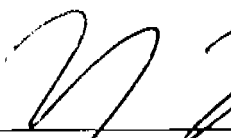
Accordingly, it is

ORDERED that the motion is granted to the extent indicated in this decision, and otherwise denied.

This constitutes the decision and order of the court.

Dated: June 4, 2007

ENTER



J.S.C.

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JUN 06 2007
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