

Usandivares v JP Morgan Chase
2007 NY Slip Op 34610(U)
December 27, 2007
Supreme Court, New York County
Docket Number: 115295/04
Judge: Louis York
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

JOSE ANTONIO USANDIVARES,

Plaintiff,

-against-

JP MORGAN CHASE, MANUFACTURES HANOVER
TRUST COMPANY, MANUFACTURERS HANOVER
CAPITAL CORPORATION, PM REALTY GROUP, L.P.,
and "JOHN DOE" last named defendant's name being
fictitious, not being known to the plaintiff, person
intended being the defendants' employee in charge of
the elevators at the defendants' building located
at 100 Duffy Avenue, Hicksville, New York, on
June 7, 2004, PARIS MAINTENANCE CO., INC.,
and UNITED ELEVATOR COMPANY, a/k/a
ALLIANCE ELEVATOR COMPANY,

Defendants.

JP MORGAN CHASE and PM REALTY GROUP, L.P.,

Third-Party Plaintiffs,

-against-

UNITED ELEVATOR COMPANY,

Third-Party Defendant.

ALLIANCE ELEVATOR COMPANY,

Second Third-Party Plaintiff,

-against-

VELIS ASSOCIATES, INC.,

Second Third-Party Defendant.

Index No.: 115295/04

Decision and Order

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COUNTY CLERK'S OFFICE

Third-Party
Index No.: 591263/05

Second Third-Party
Index No.: 590669/05

ALLIANCE ELEVATOR COMPANY,

Third Third-Party Plaintiff,

Second Third-Party
Index No.: 590669/05

-against-

PARIS MAINTENANCE CO., INC.,

Third Third-Party Defendant.

Hon. Louis York, J.:

In this personal injury action, defendant/third-party defendant/second and third third-third party plaintiff United Elevator Company s/h/a Alliance Elevator Company (Alliance) moves for an order: 1) vacating plaintiff Jose Usandivares's (plaintiff) note of issue and certificate of readiness and striking this action from the calendar; 2) striking the answers of defendant/third third-party defendant Paris Maintenance Co., Inc. (Paris), defendants/third-party plaintiffs JP Morgan Chase Bank (JP Morgan) and P.M. Realty Group, L.P. (PM Realty), for their purported failure to comply with Alliance's discovery demand, or alternatively, compelling Paris, JP Morgan and PM Realty to produce the sought-after discovery within 10 days; and, 3) extending defendants' time to move for summary judgment to 90 days after the completion of outstanding discovery.

JP Morgan, PM Realty and Paris oppose that branch of Alliance's motion that seeks to strike their answers and support that branch of Alliance's motion that seeks to extend the time in which summary judgment motions may be filed. Plaintiff opposes that branch of Alliance's motion that seeks to strike his note of issue and strike this

action from the trial calendar.

Alliance's motion is predicated on discovery having been incomplete as of the date the note of issue was filed. Said discovery focused on an engineering contract and an engineering logbook that had not been produced, although discovery demands had been made, and the examination before trial of a witness disclosed in Paris's witness list, viz., Kurt Maier (Maier).

Subsequent to the initial return date of the instant motion, the parties continued to engage in discovery. As of this date, there is no dispute that the relevant contract has been produced, that the parties have inspected the logbook at issue, and that Maier's deposition was completed. Accordingly, those branches of Alliance's motion seeking to strike plaintiff's note of issue, strike this action from the trial calendar and strike the answers of Paris, JP Morgan and PM Realty are denied.

Subsequent to the filing of the instant motion, various parties have moved for summary judgment and/or the severing of the third-party action(s). To the extent, if any, that a party to this action was unable to submit evidence arising from the purportedly belated discovery relating to the contract, logbook, and/or Maier's deposition, that party may offer an additional submission in support of their respective position(s). Such submissions, if any, shall be limited solely to the aforementioned subjects and shall be submitted within 15 days of the date of this order. In all other respects, that branch of the instant motion that seeks to extend the time in which summary judgment motions may be filed is denied.

Accordingly, it is hereby

ORDERED that the branch of the instant motion seeking to strike plaintiff's note

of issue and to strike this action from the trial calendar is denied; and it is further

ORDERED that the branch of the instant motion seeking to strike the answers of defendants JP Morgan, PM Realty and Paris is denied; and it is further

ORDERED that the branch of the instant motion seeking to extend the time in which summary judgment motions may be filed is granted solely to the extent that within 10 days of the date of this decision and order, those parties who have heretofore not addressed the issues raised by the engineering contract, the engineering logbook, and/or Maier's deposition in their support of and/or in opposition to the pending motions for summary judgment and/or severance, may offer submissions relating exclusively to the engineering contract, engineering logbook, and/or Maier's deposition.

Dated: New York, New York

~~December 2007~~

Dec. 27, 2007

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