

Villafane v 600 West 178th St., LLC

2008 NY Slip Op 30285(U)

January 22, 2008

Supreme Court, New York County

Docket Number: 0109338/2006

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 36

-----x
LYNNE VILLAFANE,

Plaintiff,

- against -

600 WEST 178TH STREET, LLC,

Defendants.
-----x

Index No. 109338/06

Motion Seq. No: 002

The following papers, numbered 1 to 3 were considered on this motion to/for :
vacate an order of this Court

Papers

Notice of Motion/Order to Show Cause - Affidavits - Exhibits
Answering Affidavits - Exhibits (Memo)

Numbered

_____ 1,2 _____
_____ 3 _____

Cross-Motion: [] Yes [X] No

HON. DORIS LING-COHAN, J.:

FILED
FEB 04 2008
COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff Lynne Villafane moves to vacate an order of this Court dated May 8, 2007 which transferred this case to the Civil Court of the City of New York, pursuant to CPLR §325(d).

This case was commenced by plaintiff to recover for personal injuries she allegedly sustained on January 30, 2006, when portions of the ceiling in her apartment collapsed and fell onto her.

The parties appeared before this Court on May 4, 2007 for a preliminary discovery conference. At such time, when asked the extent of plaintiff's injuries, counsel appearing for plaintiff merely indicated that plaintiff's injuries included a concussion and herniated discs, that nothing was broken, that there was no hospital stay, only emergency room treatment and physical therapy, and that plaintiff had not had surgery as a result of the subject injuries;

appearing counsel did not indicate that plaintiff would need surgery in the future. Appearing counsel also was unaware of whether there was a lost wages claim. Thus, upon assessing the case, this Court, in its discretion, issued an order pursuant to CPLR §325(d), transferring this matter to the Civil Court.

In seeking that this Court vacate its transfer order dated May 8, 2007, plaintiff cites no case law in support. Rather, plaintiff's counsel merely argues that plaintiff's injuries are serious and warrant the jurisdiction of the Supreme Court. Specifically, plaintiff asserts that subsequent to the issuance of the transfer order, on August 23, 2007, plaintiff underwent surgery.

In opposition, defendant argues that plaintiff's surgery alone is an insufficient ground to vacate this Court's transfer order. Defendant further argues that plaintiff failed to show any prejudice as a result of the transfer of this case to the Civil Court, since CPLR §325 (d) allows removed claims to maintain the unlimited monetary jurisdiction of the court above. This Court agrees.

CPLR § 325 (d) allows the Supreme Court to remove an action, without the parties' consent, to a lower court of limited jurisdiction "where it appears that the amount of damages sustained may be less than demanded and the lower court would have jurisdiction but for the amount of damages demanded." It was on such basis, that this case was removed to the Civil Court.

Significantly, in seeking to vacate the transfer order, plaintiff fails to explain why the attorney who appeared for plaintiff at the preliminary discovery conference lacked the

information now being supplied.¹ This Part's published rules specifically provide that: "[c]ounsel appearing [at discovery conferences] shall be prepared to discuss all outstanding discovery issues, as well as the facts of the case and settlement options" (emphasis supplied). It is inappropriate to reward plaintiff's counsel's failure to comply with the Part's rules, by appearing at the Court ordered conference unprepared to fully and accurately discuss the facts of the case, as it would encourage others to be similarly unprepared at court appearances and to not follow court rules. Given the Supreme Court caseload, judges need to rely on the information given by attorneys at conferences to assess whether a case should be transferred. Judicial economy would be affected if attorneys were encouraged to not to be prepared at court conferences by allowing subsequent motions arguing additional facts not raised earlier at the preliminary conference.

Moreover, the mere submission at this juncture of a doctor's affidavit indicating that surgery was subsequently performed on plaintiff, does not warrant vacatur of this Court's May 8, 2007 order of transfer. In addition, noticeably absent from the submitted papers is an affidavit from plaintiff attesting to the extent of her injuries. Further, assuming *in arguendo* that

¹ Apparently, according to defendant, plaintiff's need for future surgery was known to plaintiff at the time the parties appeared for a preliminary conference, since the March 19, 2007 bill of particulars (which was not supplied to the court at the preliminary conference) included a reference to the need for future "[d]ecompressive [m]icrosurgery to the [c]ervical [s]pine", but plaintiff failed to advise the Court. [See Exh. B, Affirmation in Opposition].

plaintiff sustained serious injuries from the alleged accident, whether plaintiff would obtain any damages at all would depend on proof as to defendant's liability, and plaintiff's negligence if any, which is not addressed by plaintiff in her motion. Thus, plaintiff failed to provide a sufficient factual basis to refute the original assessment of damages. See *Samuels v. Cauldwell-Wingate, Inc.*, 262 AD2d 178 (1st Dept 1999); *Mui v. Miller*, 226 AD2d 182 (1st Dept 1996).

Furthermore, plaintiff cannot be deemed to be prejudiced by the transfer of this case to Civil Court since "any verdict plaintiff might recover would not be subject to the Civil Court's monetary jurisdiction". *Samuels v. Cauldwell-Wingate Co., Inc.*, 262 AD2d at 179 (holding that by removing a claim to Civil Court, plaintiff was not prejudiced because the removed claim was not restrained by the Civil Court's limited money jurisdiction). Claims removed to Civil Court from Supreme Court, pursuant to CPLR §325 (d), retain the same unlimited money jurisdiction that they would have had if the claim remained in Supreme Court. The statute specifically states that "[i]f the action is so removed, then the verdict or judgment shall be subject to the limitation of monetary jurisdiction of the court in which the action was originally commenced and shall be lawful to the extent of the amount demanded within such limitation." Civil Court judges are well versed with the issues which may be raised in this case and, in fact, many Civil Court judges hear Supreme Court cases, by designation. Thus, plaintiff's case for monetary damages is in no

way altered by the removal to the Civil Court. Moreover, it is not alleged that plaintiff is seeking equitable relief, which would deprive the Civil Court of jurisdiction. Cf *Sirota v. New York City Bd. Of Educ.*, 265 AD2d 267 (1st Dept 1999) (transfer to Civil Court improper where complaint sought both equitable and monetary relief).

Accordingly, it is

ORDERED that plaintiff's motion to vacate the order of this Court dated May 8, 2007 which transferred this action to the Civil Court of the City of New York pursuant to CPLR §325 (d) is denied; it is further

ORDERED that within 30 days of entry of this order, defendant shall serve a copy upon plaintiff with notice of entry.

Dated: January 22, 2008


Doris Ling-Cohan, JSC

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if Appropriate: DO NOT POST

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