

Azzarello v Clear Channel Worldwide

2008 NY Slip Op 31841(U)

June 18, 2008

Supreme Court, Nassau County

Docket Number: 9079-06/

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

ANN AZZARELLO,

Plaintiff,

TRIAL / IAS PART 32
NASSAU COUNTY

Index No. 9079/06

- against -

Motion Sequence No. 001, 002

CLEAR CHANNEL WORLDWIDE d/b/a THE
WESTBURY MUSIC FAIR, GARDEN CITY
DANCE STUDIO, INC., CLEAR CHANNEL
ENTERTAINMENT TELEVISION HOLDINGS,
INC. and WESTBURY MUSIC FAIR,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	<u>3, 4</u>
Replying Affidavits	<u>5</u>
Briefs: Plaintiff's / Petitioner's	<u> </u>
Defendant's / Respondent's	<u>6</u>

The defendants CLEAR CHANNEL WORLDWIDE d/b/a THE WESTBURY
MUSIC FAIR, CLEAR CHANNEL ENTERTAINMENT TELEVISION HOLDINGS,
INC., and WESTBURY MUSIC FAIR, LLC. move this court for an order pursuant to
CPLR § 3103 for a protective order striking the plaintiff's Third Discovery Demand dated
January 10, 2008 and six Notices of Examination Before Trial dated January 8, 2008.

The plaintiff cross-moves for an order dismissing the defendants' motion for a

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protective order striking plaintiff's Third Discovery Demand; striking the defendants' answer; or in the alternative compelling the defendants to respond to plaintiff's Second Discovery Demand, dated August 10, 2007; and plaintiff's Third Discovery Demand dated January 10, 2008; appointing a referee at defendant's expense to supervise disclosure; directing defendants to produce witnesses to appear for a deposition in compliance with plaintiff's Notices of Examination Before Trial; and extending the Notice of Issue deadline of March 29, 2008 to allow the defendants to comply with outstanding discovery demands.

The co-defendant GARDEN CITY DANCE STUDIO filed an affirmation in partial opposition to the co-defendants' motion and plaintiff's cross-motion.

This is an action for personal injury. The plaintiff alleges while she was a patron at the defendants' facility on June 8, 2003 she sustained personal injury when she fell while walking in the backstage hallway area in front of restrooms due to the negligence of the defendants. At the time of the incident the premises were leased for a children's dance recital by co-defendant GARDEN CITY DANCE STUDIO, INC.

The defendants allege that in response to the plaintiff's notice for deposition Mr. Adam Citron, the General Manager of the North Fork Theatre a.k.a. Westbury Music Fair was produced on December 17, 2007 for examination. Thereafter, the plaintiff served a Third Discovery Demand dated January 10, 2008 requesting a lists of names of the production crew, the security crew, the usher crew, the box office staff and the security

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directors at the Westbury Music Fair on the date of the accident. The plaintiff also served Notices of Examination Before Trial dated January 8, 2008 for six individuals employed by the defendants. On February 19, 2008 the defendants served Notices of Rejection to plaintiff's Third Discovery Demand as well as the six Notices for Examination Before Trial.

The defendants argue the plaintiff is engaging in "a fishing expedition" in requesting information for all employees that were present in the entire theater regardless of whether they were in the backstage area where the plaintiff's alleged accident occurred. Defendants further argue that the plaintiff has ascertained through discovery the names of the individuals working at the theater through the testimony of Adam Citron, the General Manager.

Further defendants object to the plaintiff's demand for six additional depositions of its employees with the exception of Ms. Maggio who filed out the plaintiff's accident report and Ms. Sue Shaw who entered into the lease agreement with the co-defendant GARDEN CITY DANCE STUDIO.

The plaintiff argues the production of the named employees and the names of the other employees working on the day of the accident is necessary as their testimony could lead to useful and discoverable formation as to the condition of the bathroom where plaintiff fell.

The plaintiff further contents the defendants did not adequately respond to the

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Second Discovery Demand requesting photos, maps, layouts, maintenance and plumbing records relevant to the area where plaintiff was caused to fall and requests that their Verified Answer to be stricken in its entirety.

It is well settled that the harsh remedy of striking a pleading should not be employed without a clear showing of deliberate and willful refusal to disclose (see, *Washington v. Alco Auto Sales*, 199 A.D.2d 1650). The penalty to be imposed for such a refusal or failure is a matter within the sound discretion of the court. The burden of establishing that a failure or refusal to disclose was the result of willful, deliberate, and contumacious conduct rests with the party seeking striking a pleading (see, *Ahroni v. City of New York*, 175 A.D.2d 789).

CPLR § 3101(a) requires, in pertinent part, “full disclosure of all matter material and necessary in the prosecution or defense of an action.” However, the principle of “full disclosure” does not give a party the right to uncontrolled and unfettered disclosure, and the trial courts have “broad power to regulate discovery to prevent abuse” (*Gilman & Ciocia, Inc. v. Walsh*, 45 A.D.3d 531; *Barouh Eaton Allen Corp. v. International Bus. Machs. Corp.*, 76 A.D.2d 873).

The court has considered all the submissions of the parties. Accordingly, it is ordered that the motion by the defendants for a protective order striking the plaintiff's Third Discovery Demand dated January 10, 2008 and six Notices of Examination Before Trial dated January 8, 2008 is granted. However, the defendants are directed to produce

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its employees Ms. Maggio and Ms. Sue Shaw for deposition within 30 days of service of
a copy of this order with notice of entry. The cross motion by the plaintiff is denied.

So ordered.

Dated: **June 18, 2008**

ENTER:



J. S. C.

HON. ANTONIO I. BRANDVEEN

FINAL DISPOSITION

NON FINAL DISPOSITION XXX

ENTERED

JUN 23 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**