

Griggs v Cablevision Sys. Corp.

2010 NY Slip Op 30469(U)

March 8, 2010

Supreme Court, New York County

Docket Number: 107690/08

Judge: Eileen A. Rakower

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

PRESENT: **HON. EILEEN A. RAKOWER**

PART 15

Index Number : 107690/2008

GRIGGS, RENE

vs.

CABLEVISION SYSTEMS

SEQUENCE NUMBER : 004

STRIKE ANSWER

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

1-3

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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED
MAR 09 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/8/10



HON. EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
RENE GRIGGS,

Plaintiff,

- against -

CABLEVISION SYSTEMS CORPORATION and
MADISON SQUARE GARDEN, L.P.,

Defendants.

Index No.
107690/08

**DECISION
and ORDER**

Mot. Seq.
004

HON. EILEEN A. RAKOWER

Plaintiff brings this action for personal injuries allegedly sustained when her seat collapsed in Madison Square Garden ("MSG") on April 16, 2006. Plaintiff alleges that the seat collapse was the result of Defendants negligence in failing to properly maintain the subject seat. Presently before Court is Plaintiff's motion to strike Defendants' answer for Defendants' alleged failure to comply with their discovery obligations.

On November 10, 2008, Plaintiff served a notice of discovery and inspection ("D&I") upon Defendants. On or around March 13, 2009, Defendants served a response to Plaintiff's 11/10/08 D&I. Plaintiff claims that Defendants' response to her D&I is insufficient. Specifically, Plaintiff points to the following requests and Defendants' responses thereto:

- **D&I Request #4:** In response to Plaintiff's demand for repair and maintenance records for the subject seat for the two year period leading up to and including the date of the incident, Defendants objected; notwithstanding their objection, Defendants stated that there were no such records for the six month period preceding the date of the incident;
- **D&I Request #5:** In response to Plaintiff's demand for all records concerning written or oral complaints regarding any of the seats in MSG for the two year period leading up to and including the date of the incident, Defendants objected; notwithstanding their objection, Defendants stated that there were no records of such complaints

regarding the subject seat for the six month period leading up to the date of the incident.

- **D&I Request #10:** In response to Plaintiff's demand for the name of the manufacturer of the seats in the section encompassing the subject seat, as well as the identification of any vendors who maintained or made repairs to the seats in the arena on behalf of Defendants, Defendants simply referred to their prior objection via correspondence dated November 24, 2008. There, Defendants objected on the ground that the demand does not seek copies of any documents but rather seeks to have Defendants identify individuals; further, to the extent that the request seeks documents, Defendants objected on the grounds that the request is not limited in time and is thus overbroad;
- **D&I Request #11:** In response to Plaintiff's demand for the names of any ushers working on the date of the incident whose assignment encompassed the location of the subject seat, as well as the names of any individuals who repaired Plaintiff's seat, Defendants simply referred to their prior objection via their November 24, 2008 correspondence. There, Defendants stated that they "will agree to provide witness information pursuant to the provisions of the CPLR."

Plaintiff submits an affirmation in support of her motion to strike. Annexed thereto as exhibits are copies of Plaintiff's summons and complaint, Defendants' answer; Plaintiff's D&I; Defendants' response; and a December 12, 2008 preliminary conference order.

Defendants submit an affirmation in opposition. Annexed to the affirmation as exhibits (not duplicative of Plaintiff's exhibits) are copies of Plaintiff's bill of particulars; the November 24, 2008 letter; Plaintiff's demand for a bill of particulars as to Defendants' affirmative defenses; and Defendants' response thereto.

Plaintiff has submitted a reply affirmation in further support of her motion.

Pursuant to CPLR §3126, a court may impose sanctions when a party willfully fails to disclose information which the court finds ought to have been disclosed. The sanction of striking a party's answer is warranted when a party repeatedly and persistently fails to comply with several disclosure orders issued by the court. (*Yoon v. Costello*, 29 A.D.3d 407[1st Dept. 2006]). The moving party

must show "conclusively that failure to disclose was willful, contumacious or due to bad faith." (*Dauria v. City of New York*, 127 AD2d 416[1st Dept. 1987]).

Here, Plaintiff has failed to demonstrate facts which warrant the extreme sanction of either striking Defendants' answer. While Plaintiff has raised issues as to the sufficiency of Defendants' responses, she has not shown that Defendants' actions were willful and contumacious, or otherwise motivated by bad faith.

Although the Court finds that striking Defendants' answer is unwarranted based upon the record before it, the Court finds that Defendants' responses to Plaintiff's D&I are insufficient. CPLR §3124 states:

If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . the party seeking disclosure may move to compel compliance or a response.

With respect to D&I request #4, the Court orders Defendants to provide all repair and maintenance records regarding the specific seat involved in the above incident for the two year period leading up to and including the date of the incident.

With respect to D&I request #5, the Court orders Defendants to produce all written or oral complaints pertaining to unstable or collapsing seats in Section 339 of MSG (the section encompassing the subject seat) for the two year period up to and including the date of the incident.

With respect to D&I requests #10 & #11, the Court denies these request on the ground that they seek the identity of entities and/or individuals rather than the discovery of documentary or other evidence properly subject to a D&I (*see* CPLR §3120). This information is appropriately obtained by either a deposition of Defendants, or by way of written interrogatories.

Wherefore it is hereby

ORDERED that Plaintiff's motion to strike is denied; and it is further

ORDERED that Defendants shall produce the above-ordered discovery to Plaintiff within 45 days of receipt of a copy of this Order with Notice of Entry.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: March 8, 2010



EILEEN A. RAKOWER, J.S.C.

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