

<b>Smith v Columbus Manor, LLC</b>
2010 NY Slip Op 31856(U)
July 9, 2010
Supreme Court, New York County
Docket Number: 110729/08
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**LOUIS B. YORK**  
J.S.C.  
Justice

PRESENT: \_\_\_\_\_

PART 2

Index Number : 110729/2008  
**SMITH, TONI**  
VS.  
**COLUMBUS MANOR**  
SEQUENCE NUMBER : 002  
COMPEL

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**  
JUL 15 2010

**MOTION IS DECIDED BY SUPREME COURT  
NEW YORK COUNTY CLERK'S OFFICE  
WITH ACCOMPANYING MEMORANDUM DECISION.**

Dated: 7/9/10

Ley

**LOUIS B. YORK**  
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 2

-----X

TONI SMITH and MOSES SMITH,

Plaintiffs,

Index No.:110729/08

-against-

COLUMBUS MANOR, LLC., a/k/a COLUMBUS  
MANOR STOCK, LLC, STELLAR MANAGEMENT  
LLC,

Defendants.

-----X

COLUMBUS MANOR, LLC., a/k/a COLUMBUS  
MANOR STOCK, LLC, STELLAR MANAGEMENT  
LLC,

Third-Party Plaintiffs,

Index No.:590262/09

-against-

CONCORD BUILDING SERVICES, INC., ARIES  
MANAGEMENT COLLECTIONS, INC. and  
ARIES MANAGEMENT, INC.,

Third-Party Defendants.

-----X

**YORK, J.:**

This action involves personal injuries which Toni Smith, plaintiff, sustained as a result of a cabinet falling on her in her apartment located at 70 West 93<sup>rd</sup> Street in Manhattan. Columbus Manor, LLC, is the owner of the apartment building where the accident took place, and Stellar Management, is the managing agent of the building. Aries Management, Inc. and Aries Management Collections, Inc., are alleged to be the former managing agents of the building, and Concord Building Services, Inc., is a company that allegedly replaced cabinetry in the building.

Concord Building Services, Inc., Aries Management, Inc., and Aries Management

Collections, Inc., third-party defendants, move, pursuant to CPLR 3103 and CPLR 3124, to compel Columbus Manor, LLC, and Stellar Management, third-party plaintiffs, to provide new responses to the first and second set of interrogatories, as well as to the first document demand. Third-party defendants also maintain that they should be entitled to take three depositions.

On July 20, 2009, third-party defendants served their first set of interrogatories on third-party plaintiffs, seeking disclosure as to the allegations made in the third-party complaint. On October 21, 2009, a compliance conference took place. At the conference, third-party plaintiffs were ordered to respond to the first set of interrogatories and document demand by November 18, 2009, and depositions of parties were to be completed by December 31, 2009. The order also states that third-party discovery is limited to only that which has not been covered by the discovery in the main action. However, third-party plaintiffs did not serve answers to the first set of interrogatories or to the document demand by the dates which were set out in the order.

On November 9, 2009, third-party defendants served a second set of interrogatories which were to be responded to by November 30, 2009. However, third-party plaintiffs failed to respond to both sets of interrogatories until December 9 and 10, 2009. Along with the responses being late, third-party defendants argue that the responses were insufficient and unresponsive.

CPLR 3133 (b) requires that when interrogatories are served on a corporation, the interrogatories must be answered by an officer, director, member, agent or employee of the corporation. Here, the verifications attached to the responses to both sets of interrogatories are improperly signed by the attorney for the first-party plaintiffs, and mistakenly dated May 13, 2009, which is several months before the first set of interrogatories were served.

Although third-party defendants maintain that they are entitled to new responses to both

sets of interrogatories, as well as to three depositions, CPLR 3130 (1) states that “[i]n the case of an action to recover damages for personal injury, injury to property or wrongful death predicated solely on a cause or causes of action for negligence, a party shall not be permitted to serve interrogatories on and conduct a deposition of the same party pursuant to rule 3107 without leave of court.”

Since this is a personal injury action, third-party defendants should have requested leave of court, as required by the CPLR, in order to conduct depositions and serve interrogatories on third-party plaintiffs. The October 21, 2009 compliance conference order does not provide the requisite leave of court; it merely sets a deadline for depositions of “parties” and fails to indicate that third-party depositions were also requested. Accordingly, this court will not compel any further answers to interrogatories and will leave it to the trial judge whether to admit any interrogatory responses into evidence.

With regard to the document demands, third-party defendants argue that third-party plaintiffs have not supplied any documents. However, third-party plaintiffs contend that the requests are overbroad, that they have supplied all relevant material in their possession, and that discovery with regard to the third-party complaint has just commenced. To the extent that any of the requested documents subsequently come into his possession, counsel for third-party plaintiffs must provide such documents within 15 days of receipt.

Third-party plaintiffs also maintain that third-party defendants have failed to supply a response to their own document demand. Therefore, third-party defendants must respond to the document demand, within 15 days of notice of entry of this order.

Third-party plaintiffs have agreed to produce both Tobia Stahl and Pedro Soto for

depositions. Third-party defendants also request that third-party plaintiffs produce a company representative with knowledge of the allegations of the third-party complaint. As any information concerning the alleged negligence of third-party defendants is relevant and should be disclosed, third-party plaintiffs must produce a witness. All three of the depositions must take place before September 10, 2010. There are to be no adjournments without prior authorization by the court.

Accordingly, it is

**ORDERED** that the motion to compel filed by Concord Building Services, Inc., Aries Management, and Aries Management Collections, Inc., third-party defendants, is denied in part, and resolved pursuant to the above directives.

Dated: July 9, 2010

ENTER:

*Ray*  
\_\_\_\_\_  
J.S.C.

LOUIS B. YORK  
J.S.C.

**FILED**  
JUL 15 2010  
NEW YORK  
COUNTY CLERK'S OFFICE