

Zaremby v Takashimaya N.Y., LLC

2010 NY Slip Op 33939(U)

July 21, 2010

Sup Ct, New York County

Docket Number: 105777/08

Judge: Louis B. York

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X

NORMA ZAREMBY,
Plaintiff,
-against-

Index No. 105777/08
Motion Date 03/17/10
Motion Seq. No. 003
Motion Cal. No. _____

TAKASHIMAYA NEW YORK, LLC, and ALLIED
BARTON SECURITY SERVICES, LLC,
Defendants.

-----X

The following papers, numbered 1 to _____ were read on this motion to Strike

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED
JUL 29 2010
NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

This is an action for damages arising out of the false arrest and false imprisonment of plaintiff in defendant's department store. Plaintiff brings this action for further disclosure after six discovery conferences, as well as other relief to be discussed infra.

Plaintiff's motion seeks to dismiss defendant Takashimaya's answer on the ground that the defendant has failed to respond to its December 28, 2009 demand for discovery. Defendant responds that it fully complied with a prior similar demand six months before. At oral argument, the parties informed the Court that the demand has been satisfied.

Accordingly, this demand is denied as moot. Moreover, had this demand not been rendered moot, it would have been denied for failure to comply with statewide Uniform Rule 202.7 since no affirmation of good-faith was made by counsel.

Plaintiff has also asked that the complaint be amended to add the third-party defendant Allied Barton Security Services, Inc. ("Allied Barton") as a direct defendant. There is no opposition to this motion, and based on the plaintiff's affidavit that Allied Barton has been involved in his case for some time, and the promise of the parties that Allied Barton will not be seeking any further discovery, this branch of the motion is granted.

Plaintiff's motion to compel Allied Barton to comply with its discovery demands is denied. Plaintiff's affidavit, although she has annexed a copy of her Demand for Discovery and Inspection, she has failed to annex copies of Allied Barton's responses served many months before the motion was made (as revealed in Allied Barton's two exhibits to its motion papers), nor does plaintiff's attorney's affidavit contain any discussion about what manner Allied Barton has failed to comply with plaintiff's discovery demands. Finally, this motion is also denied for plaintiff's attorney's failure to serve an affirmation of good faith in accordance with rule 202.7 of the statewide Uniform Rules.

That branch of plaintiff's motion seeking a trial preference is denied. Although the Court stated at oral argument that a trial preference would be granted, upon reflection, the Court denies the motion. Plaintiff's doctor submitted an unsworn statement to the effect that

plaintiff was suffering from a form of cancer called "Mantle Cell Lymphoma." He stated that she would not be able to participate in court proceedings for four months. He did not say that the illness was fatal; nor was there any allegation that plaintiff was terminally ill. Thus, CPLR 3403(b) was not satisfied, leaving no basis to grant the special preference.

Plaintiff's request for a compact diskette of the surveillance video of plaintiff is denied as moot as the affidavit of the defendant stated that a copy of the diskette was supplied to plaintiff's counsel on the 4th of March, 2010. This was most likely before the defendant received plaintiff's Order to Show Cause, which was sent by ordinary first-class mail on March 3, 2010. At ^{argument} ~~trial~~, the parties informed the Court that this issue was resolved.

No Affidavit of Service was produced for defendant Takashimaya. Defendant Takashimaya may serve a copy of its Answer within twenty (20) days of the service of a copy of this decision with Notice of Entry or it may rely on its original Answer. Defendant Allied Barton has twenty (20) days from the service of this decision with Notice of Entry to serve its Answer.

The caption of this action is amended as follows:

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

-----X

NORA ZAREMBY

Plaintiff,

Index No. 105777/08

- against -

TAKASHIMAYA NEW YORK, LLC, and
ALLIED BARTON SECURITY SERVICES, LLC,
Defendants,

-----X

TAKASHIMAYA NEW YORK, LLC,

Third-Party Plaintiff,

- against -

ALLIED BARTON SECURITY SERVICES, LLC,

Third-Party Defendant.

-----X

FILED
JUL 29 2010
NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff shall serve a copy of this decision on the Clerk of the Court and the Clerk of Trial Support who are directed to mark their records accordingly.

I have considered plaintiff's remaining arguments and find them to be without merit.

This constitutes the Order and Decision of the Court.

Dated: 7/21/10

Enter:

L. York
Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE