

Fernandez v Amos

2011 NY Slip Op 34309(U)

July 1, 2011

Supreme Court, New York County

Docket Number: 106700-2010

Judge: George J. Silver

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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. George J. Silver
Justice

PART 22

FERNANDEZ, JUAN C.

INDEX NO. 106700-2010

- v -

MOTION DATE _____

AMOS, NICHOLAS

MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion for _____

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) Exhibits _____

FILED

No(s) _____

Answering Affirmation(s) — Affidavit(s) — Exhibits _____

No(s) 2

Replying Affirmation — Affidavit(s) — Exhibits _____

JUL 06 2011

No(s) 3

Upon the foregoing papers, It is ordered that this motion

NEW YORK
COUNTY CLERK'S OFFICE

In this action to recover for personal injuries alleged sustained as a result of a motor vehicle accident plaintiffs Juan C. Fernandez and Angela Beltran ("plaintiffs") move pursuant to CPLR § 3103 for a protective order. Plaintiffs were allegedly injured in a motor vehicle accident on April 25, 2010. On March 20, 2011 the parties stipulated that all discovery was complete and that a note of issue was to be filed on or before April 22, 2011. Plaintiffs filed note of issue on April 5, 2011. Defendant served served a notice to admit dated May 2, 2011 seeking information and, as defendant describes it, discovery, relevant to plaintiff Juan C. Fernandez's social media usage and social networking sites. Defendant also served a post-note of issue further notice for discovery and inspection, also dated May 2, 2011, in which he sought authorizations for plaintiff's social media/networking history.

CPLR 3123 § [a] provides, in part, with regard to a notice to admit that: "At any time after service of the answer or after the expiration of twenty days from service of the summons, whichever is sooner, and not later than twenty days before the trial, a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry." "CPLR § 3123 [a] is not intended as simply another means for achieving discovery, and there is no substantive collision between this provision and the court rule disallowing further discovery following the filing of a note of issue and certificate of readiness." (*Hodes v New York*, 165 AD2d 168 [1st Dept 1991]). "Rather, the purpose of a notice to admit is to crystallize issues and to eliminate from trial those that are easily provable or not really in dispute. Thus, the subject section makes available a procedure whereby a party may, in effect, procure a stipulation from the opposing party regarding certain specific matters concerning which there is general agreement and whose exclusion as an issue to be litigated will serve to expedite the trial." (*id.*). An examination of defendant's eight page notice to admit reveals that it would not serve to exclude factual issues from trial, but would only raise new issues that should have been resolved during

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

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check as appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. Check as appropriate: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

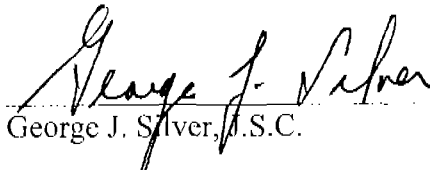
the discovery phase of this matter, particularly during plaintiff Juan C. Fernandez's deposition (*Ahroner v Israel Discount Bank of N.Y.*, 2010 NY Slip Op 9013 [1st Dept]). Since defendant's notice to admit "appears to be merely a subterfuge for obtaining further discovery" (*Hodes*, 165 AD2d at 171) and since defendant, who stipulated that all discovery was complete, has not demonstrated any unusual or unanticipated circumstances that would warrant permitting him to conduct discovery following the filing of the note of issue and certificate of readiness (22 NYCRR 202.21 [d]) plaintiff's motion for a protective order is granted with respect to defendant's notice to admit.

Defendant's failure to demonstrate unusual or unanticipated circumstances also warrants a protective order with respect to defendant's further notice for discovery and inspection. While defendant is correct that a court has held that information contained on social media and social networking websites is material and necessary and therefore discoverable in those instances when a plaintiff places his or her physical condition in issue (*see Romano v Steelcase Inc.*, 2010 NY Slip Op 20388 [Sup Ct Suffolk County]) such discovery is not immune from the court rules governing the timing of discovery. Accordingly, it is hereby

ORDERED that plaintiff's motion for a protective order is granted and they need not respond to defendant's notice to admit and further notice for discovery and inspection; and it is further

ORDERED that defendant's notice to admit and further notice for discovery and inspection are stricken in their entirety; and it is further

ORDERED that plaintiffs are to serve a copy of this order with notice of entry upon defendant within 20 days of entry.


George J. Silver, J.S.C.

Dated: **JUL 01 2011**
New York County

GEORGE J. SILVER
J.S.C.

FILED

JUL 06 2011

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