

Hatzantonis v Best Buy Stores, L.P.

2012 NY Slip Op 33072(U)

December 20, 2012

Supreme Court, New York County

Docket Number: 101727/11

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

ILIAS HATZANTONIS

Plaintiff

-against-

BEST BUY STORES, L.P., et al.
Defendants

INDEX NO. 101727/11

MOTION DATE

MOTION SEQ. NO. 002

MOTION CAL. NO.

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause/Affidavits - Exhibits

1

Answering Affidavits - Exhibits

2

Replying Affidavits

3-4

CROSS-MOTION: YES NO

FILED

DEC 27 2012

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

NEW YORK COUNTY CLERKS OFFICE

Dated: 12/20/12

DM
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
DONNA M. MILLS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
ILIAS HATZANTONIS,

Plaintiff,

-against-

Index No. 101727/11

BEST BUY STORES, L.P., MOKLAM
ENTERPRISES, INC. and YUCO
MANAGEMENT, INC.,

FILED

DEC 27 2012

Defendants.

NEW YORK
COUNTY CLERK'S OFFICE

-----X
DONNA MILLS, J.:

The plaintiff Ilias Hatzantonis (Hatzantonis) moves, pursuant to CPLR 3124 and 3126, for an order striking the answer, precluding the defendants Best Buy Stores; L.P. (Best Buy), Moklam Enterprises, Inc. (Moklam) and Yuco Management, Inc. (Yuco) from contesting the issue of notice of the defective condition, and imposing sanctions.

This is an action to recover damages for personal injuries (a cut ankle) suffered by the plaintiff Hatzantonis when, at premises located at 622 Broadway in Manhattan, the glass exit door suddenly shattered.

In support of his motion, Hatzantonis makes the following arguments. Best Buy claims to no longer have the broken glass in its possession even though Best Buy was immediately aware of the accident and should have known that the plaintiff Hatzantonis was likely to bring suit. Best Buy spoliated evidence by disposing of the shattered glass. Best Buy has refused to agree to a site inspection because the glass has been repaired. Best Buy should be sanctioned and precluded for failing to comply with numerous court orders. Best Buy has lost or destroyed relevant evidence in the form of glass maintenance and installation contracts.

In opposition to the motion, the defendants make the following arguments. The

defendants have complied with all discovery requests and court orders. Defendants offer to provide the name of the glass maintenance company that last serviced the subject glass door.

In reply, the plaintiff Hatzantonis argues that the records regarding the manufacture, model, purchase, installation and maintenance of the glass doors in question are being sought because the defendants discarded the remnants of the glass. The plaintiff also insists on a site inspection even though the glass has been replaced.

CPLR 3101 (a) entitles parties to "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" and includes "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). "[D]iscovery determinations are discretionary; each request must be evaluated on a case-by-case basis with due regard for the strong policy supporting open disclosure" (*Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 747 [2000]).

Sanctions may be imposed for even negligent spoliation (*Squitieri v City of New York*, 248 AD2d 201, 203 [1st Dept 1998]). However, the striking of a pleading is usually not warranted unless the evidence is crucial, and the spoliator's conduct evinces a high degree of culpability (*Hall v Elrac, Inc.*, 79 AD3d 427, 428 [1st Dept 2010]).

Here, the plaintiff Hatzantonis fails to demonstrate that the disposed of broken glass is key evidence warranting a harsh sanction. Rather, a lesser sanction appears to be appropriate (*Russo v BMW of N. Am., LLC*, 82 AD3d 643, 644 [1st Dept 2011]), and that is a matter best left to the discretion of the trial court on the basis of the record before it at the time (*Palakawong v Lalli*, 88 AD3d 541 [1st Dept 2011]; *Kugel v City of New York*, 60 AD3d 403 [1st Dept 2009]).

Turning to the question of monetary sanctions, the plaintiff Hatzantonis fails to demonstrate that the defendants disobeyed a court order. Indeed, despite the volume of Hatzantonis's motion papers, there is not even a single court order attached as an exhibit. A movant on a sanctions motion should at least attach a copy of the relevant court order, and point

to the portion of the order that was allegedly not complied with.

Finally, the defendants must produce the installation documents for the glass door, regardless of date, and the maintenance records for the three-year period preceding the incident. In addition, the defendants must allow a site inspection by the plaintiff's expert.

Accordingly, it is

ORDERED that within 20 days of service of a copy of this order, with notice of entry, the defendants provide any installation documents in their possession (regardless of date) for the subject glass door, and provide the maintenance records for the glass door for the three years preceding the incident; and it is further

ORDERED that the defendants allow, on a mutually convenient date, a site inspection by plaintiff's expert.

Dated: 12/20/12

ENTER:

Donna Mills

J.S.C.

DONNA M. MILLS, J.S.C.

FILED

DEC 27 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

