

**DeLaCruz v New York Palace Hotel**

2012 NY Slip Op 33619(U)

October 17, 2012

Sup Ct, New York County

Docket Number: 103034/10

Judge: Eileen A. Rakower

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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

**HON. EILEEN A. RAKOWER**

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

PART 15

Index Number : 103034/2010  
DELACRUZ, FATIMA  
vs  
N.Y. PALACE HOTEL  
Sequence Number : 011  
COMPEL DISCLOSURE

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s) \_\_\_\_\_

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

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

**FILED**

OCT 23 2012

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 10/17/12

  
\_\_\_\_\_, J.S.C.  
**HON. EILEEN A. RAKOWER**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----X  
FATIMA DE LA CRUZ,

Plaintiff,

Index No.103034/10

- against -

Decision and Order  
Mot. Seq. 011

NEW YORK PALACE HOTEL, DORCHESTER  
SERVICES, INC., ALLSTATE OVERHEAD  
GARAGE DOORS, INC., ACME ROLLING STEEL  
DOOR, CORP. ARCHDIOCESE OF NEW YORK,  
Defendants.

-----X  
AMEDEO HOTELS, LTD d/b/a NEW YORK  
PALACE HOTEL,

Third-Party Plaintiff,

Third-Party Index No.:  
590674/10

-against-

**FILED**

MICHAEL SKURNIK WINES, INC.

Third-Party Defendant.

OCT 23 2012

-----X  
ACME ROLLING STEEL DOOR CORP.,

Second Third-Party Plaintiff,

**NEW YORK COUNTY CLERK'S OFFICE** Third-Party  
Index No.: 590835/10

-against-

MICHAEL SKURNIK WINES, INC.

Second Third-Party Defendant.

-----X  
AMEDEO HOTELS, LTD., d/b/a  
NEW YORK PALACE HOTEL,

Third Third-Party Plaintiff,

Third Third-Party  
Index No.:

-against-

FOND DU LAC COLD STORAGE, LLC,

Third Third-Party Defendant.

-----X  
 AMEDEO HOTELS, LTD., d/b/a NEW YORK PALACE HOTEL, Fourth Third-Party  
 HOTEL, Index No. 590202/12

Fourth Third-Party Plaintiff,  
 -against-

OTIS ELEVATOR COMPANY,  
 Fourth Third-Party Defendant

-----X  
 HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Fatima De La Cruz brings this action to recover money damages for personal injuries allegedly incurred in a freight elevator accident at the New York Palace Hotel, located at 455 Madison Avenue in the County and State of New York, on November 6, 2007. Plaintiff claims that while in the course of her employment, she was making a delivery at the New York Palace Hotel, and that she sustained personal injuries when she was struck by a closing screen/gate as she entered the hotel's freight elevator.

Plaintiff moves, pursuant to CPLR 3124, for an Order to compel the deposition of George Sanchez, an employee of defendant/fourth third-party plaintiff Amedeo Hotels, Ltd, d/b/a New York Palace Hotel ("Amedeo"). Plaintiff states that discovery has revealed that a similar incident occurred prior to the incident at issue which involved Mr. Sanchez in 2005. Plaintiff seeks to depose Sanchez to inquire regarding the details of his incident and any subsequent action taken by the hotel in response to the same. Plaintiff asserts that this information relates to its claims of notice of a dangerous condition.

Plaintiff represents that she previously requested that Amedeo produce Mr. Sanchez for a deposition and/or provide his contact information. Amedeo objected on the basis that Sanchez, still employed by Amedeo, is not a witness to the accident at issue and was previously deposed in the matter *George Sanchez v. Otis Elevator Company*, commenced in Supreme Court, Westchester County, Index No, 6535/2008.

Amedeo and fourth third-party defendant Otis Elevator Company ("Otis") oppose. Amedeo contends that it has already produced two witnesses for depositions. Amedeo argues that plaintiff's motion should be denied as plaintiff has failed to make

[\* 4]

a “detailed showing” of the need to take Sanchez’s deposition. Furthermore, Amedeo contends that “the Sanchez incident is simply too remote in time to the plaintiff’s claims in his lawsuit” and that the elevator at issue was inspected on three occasions in between the Sanchez incident and plaintiff’s November 6, 2007 incident. Amedeo also contends that Mr. Sanchez was deposed in his own lawsuit against Otis and that Otis had previously agreed to make the deposition available for inspection within their office. Otis represents that only Mr. Finkelstein, on behalf of Amedeo, has availed himself of that opportunity. Otis represents that it also made available additional materials from the Sanchez matter available for inspection, including pleadings, disclosure demands/responses, and also the deposition of an eyewitness co-worker of Mr. Sanchez, Mr. Young. In its reply, plaintiff states that “while Otis will presumably make the Sanchez litigation file available, a transcript of a deposition is no substitute for live testimony.” Plaintiff contends that “Mr. Sanchez possesses unique information relating to a prior similar incident in which the elevator improperly closed and struck him in the head, causing injuries.” Plaintiff contends that neither Mr. Vertiz or Mr. Arce, the two witnesses previously produced by Amedeo, were present during the Sanchez incident nor did they have any substantive information regarding the same.

CPLR §3101(a) generally provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” However, CPLR §3103(a) provides that:

The court may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.


“Only when the plaintiff establishes that the knowledge of the proffered official is insufficient to produce testimonial and documentary evidence ‘material and necessary’ to the prosecution of the action, as provided in CPLR 3101(a), may the court grant a motion for the production of additional witnesses.” *Colicchio v. New York*, 181 A.D. 2d 528 (1<sup>st</sup> Dept 1992). “Further, a party seeking to depose additional witnesses must make a detailed showing of the necessity for taking such depositions.” (*Id.*). Here, plaintiff has satisfied her burden and has provided the requisite showing

of the necessity for taking the additional deposition of George Sanchez.

Wherefore it is hereby

ORDERED that plaintiff Fatima De La Cruz's motion is granted to the extent that defendant/fourth third-party plaintiff Amedeo Hotels, Ltd, d/b/a New York Palace Hotel, is directed to produce George Sanchez for a deposition within 20 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: 10/17/12   
EILEEN A. RAKOWER, J.S.C.

**FILED**  
OCT 23 2012  
NEW YORK  
COUNTY CLERKS OFFICE