

Stubblefield v New York City

2013 NY Slip Op 33670(U)

April 7, 2013

Sup Ct, Bronx County

Docket Number: 0309064/2009

Judge: Laura G. Douglas

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This opinion is uncorrected and not selected for official publication.

PART ~~15~~ 11

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

Case Disposed
 Settle Order
 Schedule Appearance

-----X
STUBBLEFIELD, SHARON

Index No. 0309064/2009

-against-

Hon. ~~ALISON Y. TUFTT~~

NEW YORK CITY
 -----X

JUDGE LAURA G. DOUGLAS Justice.

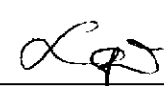
The following papers numbered 1 to _____ Read on this motion, **COMPEL**
 Noticed on **January 10 2013** and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	①	
Answering Affidavit and Exhibits	②	
Replying Affidavit and Exhibits	③	
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is granted to the extent indicated in the decision and order dated April 4, 2013.

Motion is Respectfully Referred to:
 Justice: _____
 Dated: _____

Dated: 4, 4, 13

Hon. 
~~ALISON Y. TUFTT, J.S.C.~~
JUDGE LAURA G. DOUGLAS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX - PART 11

-----X
SHARON STUBBLEFIELD,

Plaintiff.

INDEX NO. 309064/2009

- against -

NEW YORK CITY HOUSING AUTHORITY.

DECISION/ORDER

Defendant.

-----X

Hon. Laura G. Douglas

Plaintiff commenced this personal injury action against defendant to recover damages plaintiff sustained in February 2009 when she fell over an air conditioning unit that was on the floor of a hallway of the apartment building in which she resided. Plaintiff resided in an apartment with her daughter Jennifer, her sister Felicia and her niece Danielle, and the women were present in the building at the time plaintiff's accident occurred.

With its initial demand for discovery and inspection, dated January 4, 2010, defendant requested, among other things, production of "any and all photographs depicting plaintiff's injuries and the area where it is alleged the occurrence ... took place, and any defect which allegedly existed thereon as it appeared on or about the alleged date of [the] accident." The March 29, 2010 preliminary conference order required plaintiff to produce duplicate color photographs within 30 days of the date of the order. By letter dated June 9, 2010, plaintiff produced four color photographs depicting the air conditioning unit. Two weeks later, the court issued a compliance conference order requiring, among other things, that the parties exchange original duplicate color photographs, or provide an affirmation that none exist. Following

plaintiff's August 2011 deposition, defendant demanded copies of certain photographs that plaintiff alluded to at her deposition that had not been produced; plaintiff responded that "[n]o other photos [were] available."

Felicia and Danielle were subsequently deposed. At their depositions, Felicia and Danielle were asked, among other things, to review the four photographs that were exchanged, and each gave testimony regarding the photographs.

Approximately 11 months after the depositions of Felicia and Danielle, plaintiff produced 19 photographs. In his letter producing the photographs, plaintiff's counsel stated that they "were taken either by [plaintiff] or her daughter Jennifer"; no reason or excuse was provided concerning why the photographs were being produced at that point. In light of this new disclosure, defendants sought to take further depositions of plaintiff, Jennifer, Felicia and Danielle. Plaintiff and Jennifer appeared for further depositions, but Felicia and Danielle have not.

Defendant moves to compel further depositions of Felicia and Danielle or other related relief (e.g., preclusion of the 19 photographs, the trial testimony of Felicia and Danielle or both).

Its position is summed-up at paragraph 34 of its affirmation in support of the motion:

"The need for these additional depositions is due to plaintiff's counsel's] failure to produce photographs despite Court Orders and [defendant's] repeated attempts to obtain such discovery prior to depositions being held. We do not know who took the additional photographs, when those photographs were taken and what those photographs show. If [defendant] is not permitted to conduct such depositions, [defendant] will be surprised and prejudiced at trial because we do not know what these witnesses will testify with respect to the newly exchanged photographs."

Plaintiff opposes the motion, arguing that the further depositions of Felicia and Danielle are unnecessary because plaintiff and Jennifer have already appeared for further depositions to

provide testimony regarding the newly produced photographs and that their testimony provides defendant with the information it needs regarding the photographs.¹ Plaintiff also argues that a preclusion penalty would be unwarranted. In reply, defendant argues that the further depositions of Felicia and Danielle are not unnecessary simply because plaintiff and Jennifer appeared for further depositions: Felicia and Danielle may have independent information regarding the photographs that may be inconsistent with the information provided by plaintiff and Jennifer. Defendant also highlights that no excuse has been offered for the belated disclosure of the 19 photographs, and stresses that it took the depositions of Felicia and Danielle in reliance on plaintiff's representation that the only photographs relevant to the action were the four that plaintiff disclosed prior to the initial depositions.

"[T]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR 3101[a]). "The words, 'material and necessary,' are ... to be interpreted liberally to require disclosure, upon request, of 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 Pub. Co.*, 21 N.Y.2d 403, 406-407 [1968]).

Here, information relating to photographs of the hazardous condition that allegedly caused plaintiff to fall (as well as photographs depicting plaintiff's injuries) is material and necessary to this action: such information is particularly material and necessary coming from individuals who live on the floor of the building where the accident occurred and were with

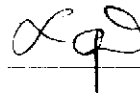
¹Because the further depositions of plaintiff and Jennifer were taken around the time this motion was made, the transcripts were not included on the motion. Although plaintiff's counsel offered to make the transcripts available, the court is able to decide the motion without them.

plaintiff immediately after the accident. That plaintiff and her daughter (Jennifer) have provided testimony about the 19 photographs does not serve to prevent defendants from obtaining the testimony of Felicia and Danielle regarding them. Defendant should have had the photographs *before* it deposed Felicia and Danielle in the first instance, and defendant should not be penalized for plaintiff's unexplained failure to disclose the photographs sooner. Notably, photographs were demanded by defendant and required by court order to be disclosed before depositions were conducted, yet they were not produced until after plaintiff, Jennifer, Felicia and Danielle were deposed. Troubling, too, is the absence of any reason or excuse for plaintiff's failure to disclose timely the photographs. Therefore, further depositions of Felicia and Danielle are directed, those depositions to be limited to the 19 belatedly-produced photographs.

Accordingly, it is hereby ordered that the motion is granted to the extent of directing Felicia Stubblefield and Danielle Stubblefield, within 60 days of the date of service of this order with notice of entry thereof, to appear for depositions limited to the photographs produced by plaintiff on or about August 9, 2012; the motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: April 11, 2013



Laura G. Douglas, J.S.C.