

|  |
|--|
| <b>Llivanay v 801 11th Ave., LLC</b>   |
| 2014 NY Slip Op 30544(U)   |
| March 6, 2014  |
| Sup Ct, New York County  |
| Docket Number: 110811/2011   |
| Judge: Louis B. York   |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office. |
| This opinion is uncorrected and not selected for official publication.   |

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: LOUIS B. YORK  
J.S.C. Justice

PART 2

Index Number : 110811/2011  
LLIVIGANAY, MIGUEL  
vs.  
801 11TH AVE., LLC  
SEQUENCE NUMBER : 002  
OTHER RELIEFS

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 ACCOMPANYING MEMORANDUM DECISION

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**

MAR 07 2014

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 3/6/14

Louis B. York  
**LOUIS B. YORK**, J.S.C.  
**J.S.C.**

- 1. CHECK ONE: .....  CASE DISPOSED
- 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

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 2

-----X  
MIGUEL LLIVIGANAY,

Plaintiff,

-against-

Index No.: 110811/2011

801 11<sup>th</sup> AVE., LLC, 801 11TH AVENUE TENANT  
LLC, GARAGE MANAGEMENT CORP., BMW OF  
MANHATTAN, INC., AND HUNTER ROBERTS  
CONSTRUCTION GROUP, LLC,

Defendants.

FILED

-----X

801 11<sup>th</sup> AVE., LLC, 801 11TH AVENUE TENANT  
LLC, GARAGE MANAGEMENT CORP., BMW OF  
MANHATTAN, INC. AND HUNTER ROBERTS  
CONSTRUCTION GROUP, LLC,

MAR 07 2014

COUNTY CLERK'S OFFICE  
NEW YORK

Third-Party Plaintiffs,

-against-

Index No.: 590399/2012

TRI STATE DISMANTLING CORP.,

Third-Party Defendants.

-----X

TRI STATE DISMANTLING CORP.,

Fourth-Party Plaintiff,

-against-

Index No.: 590008/2013

ROBO BREAKING CO. INC.,

Fourth-Party Defendant.

-----X

**YORK, J.:**

In this action in which plaintiff Miguel Llivigany seeks damages for personal injuries which allegedly took place while he was working at a construction site, plaintiff moves to amend

the caption of this matter to reflect an amendment granted by this court in an order dated June 19, 2013; moves to compel the completion of plaintiff's and defendants' depositions; moves to compel defendant Robo Breaking to respond to plaintiff's combined demands; and moves to extend the deadline for the filing of the note of issue.

Defendants/third-party plaintiffs 801 11th Ave, LLC, 801 11th Avenue Tenant LLC, Garage Management Corp., BMW of Manhattan, Inc., and Hunter Roberts Construction Group, L.L.C., cross-move, pursuant to CPLR 3124 and 3126, to compel plaintiff to comply with outstanding discovery demands, or alternatively, move to preclude plaintiff from offering any evidence at trial on the issues as to which outstanding discovery exists.

First, plaintiff requests that this court amend the caption of this case to include "Rosa Tigre" as an additional plaintiff. Plaintiff maintains that a motion was made in April of 2013 to amend the complaint, however, on June 19, 2013, a stipulation which was "so ordered" by this court, amended the caption of this case, but did not include "Rosa Tigre" as an additional plaintiff. Therefore, plaintiff is to submit to this court, within 14 days of service of entry of this order, a stipulation signed by the parties which includes the new caption for this courts review.

Plaintiff maintains that at a compliance conference which took place on June 26, 2013, depositions were scheduled. At the compliance conference, the court notes that "Discovery & NOI (note of issue) deadlines extended 2 months to 9/12/14, for both. This is a final extension." While plaintiff's deposition took place on August 28, 2013, the parties indicate that plaintiff's deposition was not completed, and subsequently, discovery was delayed. Plaintiff's counsel maintains that he contacted the court shortly thereafter because discovery remained outstanding, and he was instructed by the court to file a motion. Neither party disputes that the deposition of

plaintiff was not completed, and defendants' depositions still need to take place.

The courts notes that the RJI in this case was filed on January 18, 2012, and this case exceeds the standard and complex discovery tracks. Therefore, to the extent that depositions remain outstanding, such depositions must be completed in an expedited manner, and are to be completed within 30 days of service of entry of this order. Although plaintiff also seeks defendant Robo Breaking to respond to plaintiff's demands, Robo Breaking contends that this request is now moot because a response was provided on September 23, 2013.

Defendants argue that it has requested that plaintiff produce his drivers license, insurance card, and automobile registration for the 2011 Honda Pilot which was involved in an automobile accident that occurred between May of 2012 and August of 2012. Although defendants contend that plaintiff was previously involved in a motor vehicle accident, it remains unclear as to the relevance of such documents and how they relate to plaintiff's alleged damages in the present action. Therefore, such request is denied without prejudice.

Defendants also contend that plaintiff refused to comply with their request for non-privileged portions of "plaintiff's immigration attorney file" including copies of documents relating to securing legalization in the United States, application documents, all documents relating to plaintiff's application for and receipt of a United States government issued Social Security Number, and Social Security Card. Defendants maintain that because plaintiff is making a lost wage claim, plaintiff is required to produce authorizations related to his immigration status. Plaintiff's counsel affirms that plaintiff is a permanent resident, that he has a green card, that he has a social security number, and argues that plaintiff's immigration status is irrelevant. Therefore, it remains unclear from the record why the immigration status of plaintiff

is in dispute.

Furthermore, plaintiff's deposition has not been completed and defendants have failed to articulate how the broad discovery of receiving "plaintiff's immigration attorney file" before the conclusion of the deposition, will provide relevant information. Accordingly, the request for the attorneys' immigration file is denied, without prejudice. If a dispute remains as to plaintiff's immigration status following the conclusion of plaintiff's deposition, the parties are to schedule a status conference by contacting this Part, at which time such topic may be addressed.

Finally, because discovery remains outstanding and because the note of issue deadline has passed, the note of issue filing deadline is extended to April 30, 2014. There will be no adjournments of the above dates without prior court approval.

**CONCLUSION and ORDER**

Accordingly, it is hereby

ORDERED that plaintiff Miguel Lliviganay's motion to compel is granted to the extent that depositions are to be completed within 30 days of service of notice of entry; and it is further

ORDERED that the note of issue deadline is extended to April 30, 2014; and it is further

ORDERED that defendants/third party plaintiffs 801 11th Ave, LLC, 801 11th Avenue Tenant LLC, Garage Management Corp., BMW of Manhattan, Inc., and Hunter Roberts Construction Group, L.L.C.'s cross motion to compel is denied.

Dated: 3/2/14

FILED

ENTER:

MAR 07 2014

Flu  
J.S.C.

COUNTY CLERK'S OFFICE  
NEW YORK  
4