

**Thomas v Greater Centennial Homes Hous. Dev.  
Fund Co., Inc.**

2014 NY Slip Op 32993(U)

September 22, 2014

Supreme Court, Westchester County

Docket Number: 54135/2012

Judge: Joan B. Lefkowitz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X  
ROBIN THOMAS,

Plaintiff

**DECISION and ORDER**

**Index No. 54135/2012  
Motion Date: Sep. 22, 2014  
Seq. No. 1**

-against-

GREATER CENTENNIAL HOMES HOUSING  
DEVELOPMENT FUND COMPANY, INC.,  
GREATER CENTENNIAL HOMES, and  
WAVE CREST MANAGEMENT,

Defendants

-----X  
LEFKOWITZ, J.

The following papers were read on this motion by plaintiff for an order compelling defendants to produce an affidavit executed by the director of property management, Charles Lyons, as directed by order of this court, specifically responding to each and every item of discovery requested by plaintiff in her discovery demand dated May 8, 2014; or, a conditional order of preclusion against defendants if such affidavit is not provided; and, for such other and further relief as this court deems just and proper.

Order to Show Cause dated August 22, 2014  
Affirmation in Support; Exhibits A- I  
Affirmation in Opposition; Exhibits A-F

Upon the foregoing papers and oral argument heard on September 22, 2014 this motion is determined as follows:

In this action plaintiff seeks damages for personal injuries allegedly sustained when she fell upon defendants' property on January 29, 2012 at about 11:30 P.M. as she was walking from a parking lot to the rear entrance of a building known as 407 South 9<sup>th</sup> Street in Mount Vernon, New York. This property is a multiple dwelling with 157 apartments. It is owned by defendant Greater Centennial Homes (hereinafter "Centennial" ) and is managed by defendant Wave Crest Management (hereinafter "Wave Crest").

By way of background, defendants state that the subject property was completely renovated about two to three years before the subject accident occurred and new sidewalks were installed. On the date of the accident Nicole Watson (hereinafter "Watson") was the property manager who had an office at the subject property. On the date of the subject accident, Karen Krieger (hereinafter "Krieger") maintained an office at Centennial and was working with a consultant on a renovation project in an effort to relocate tenants during the renovation. About six months after the subject accident, Krieger was hired as the property manager at the subject site. Charles Lyons (hereinafter "Lyons") is a senior property manager who has an office in Queens, New York and who oversees many properties including the subject property.

At her deposition on March 28, 2014 Watson testified that when she worked for defendants, her office was not located at Centennial. She worked out of a trailer. There she maintained tenant files. There was a fire that occurred within about the last two to three years that she was working for defendants. However, she testified that her files were packed to be moved because she knew she had to move due to the construction. She testified that none of the files were destroyed. Watson also testified that within her last year at Centennial she did not receive any tenant complaints regarding common areas and she could not remember whether she received any tenant complaints within the two to three years before she moved from Centennial.

At her deposition on March 17, 2014 Krieger testified that she did not know what happened to incident reports before June 2012. Krieger testified that when she received complaints regarding lights that were on top of the building she called the property manager to ask an outside firm to come in and deal with that.

At his deposition on April 30, 2014 Lyons testified that Watson's office was always located at "103 South either 5<sup>th</sup> or 8<sup>th</sup>" but that during a period of construction her office was relocated to a trailer. He remembered that there was a fire in Watson's office but he could not remember when. He did testify that he was not aware of any damage to any files after her office moved to the trailer. He believed that after the fire Watson looked into the files that were maintained in the office and the computers to see if anything was salvageable. Lyons testified that he believed all the files were salvageable. When Watson moved to the trailer, she took the files with her and when she left Centennial, the files were left with Centennial. Lyons testified that there's a file created for every tenant/apartment which file remains with Centennial indefinitely.

Lyons also testified about a light in the "reddish area". He testified that if that light went out it was replaced through a contractor. He testified that if the property manager called him and said a light was out, Lyons would tell the property manager to contact the electrician. Typically he received an email or a telephone call about a burned out light but otherwise it wasn't documented. The bill for the work to fix the light would be maintained in the building file or the accounting file.

By compliance conference order dated May 7, 2014 the parties were directed to serve

their post deposition discovery demands by May 20, 2014. Responses to plaintiff's post deposition demands were due on or before June 5, 2014.

By notice dated May 8, 2014 plaintiff sought supplemental discovery. Defendants submitted their response dated July 2, 2014. They also submitted the affidavit of Krieger dated July 2, 2014 in response to this demand. Krieger stated that her affidavit was in regards to her further search for documents. She stated that on the day of the subject accident no construction was going on at the building where the subject accident occurred. Construction at that building had been completed 2 ½ years prior to the date of the accident. Krieger stated that she made several searches for documents in response to plaintiff's demands which included analysis of physical files located in her office and review of computerized records and materials on a flash drive. She stated that her computer has "the same access to the computers maintained in Mr. Lyons office and a flash drive and spoke to Wave Crest employees in an effort to broaden" her search. Among other searches conducted, she searched for records and invoices pertaining to exterior lighting at the back of the subject building where plaintiff allegedly fell and did not find any records. She stated that no work was done on the exterior lighting prior to the accident.

Plaintiff states that although Krieger stated in her affidavit that she searched physical files, computer records, materials on a flash drive and that she reviewed her computer which has access to the materials maintained on Lyons' computer and although she said she spoke to Wave Crest employees, she did not state that she conferred with Lyons nor that she conducted a search of his office for the requested documents. Plaintiff states that her demand dated May 8, 2014 was directly based on Lyon's deposition testimony.

Presently, plaintiff seeks an order directing Lyons to personally conduct a search at the Wave Crest main office and at any other office wherein responsive documents may exist and respond item by item to their demand dated May 8, 2014.

This motion is opposed by defendants. They note that this motion should fail insofar as plaintiff failed to attach the pleadings as well as copies of the full deposition transcripts on which she relies for the present argument. They further note that they have responded already to her discovery demands. They also note that this court did not order an affidavit prepared by Lyons in response to the May 8, 2014 discovery demand. The court directed a response with which directive defendants state they complied. Defendants note that they not only provided a response but also provided Krieger's affidavit. Defendants state that Krieger, as the current property manger on site, who has access to both paper files and the same computer system as Lyons, is in the best position to respond to the demands. Defendants also contend that plaintiff's reference to files being destroyed in a fire is irrelevant. Even if files were destroyed (and that hasn't been demonstrated) documents going back two to three years prior to the accident are too remote in time to bear relevance to this matter.

Parties to an action are entitled to reasonable discovery of facts that are relevant to the controversy at issue and CPLR 3101 (a) permits discovery of "all matter material and necessary

in the prosecution or defense of an action.” However unlimited disclosure is not mandated and the court may deny, limit, condition or regulate the use of a disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts (*see Diaz v City of New York*, 117 AD3d 777 [2d Dept 2014]).

Contrary to plaintiff’s assertions, there are no contradictions amongst the testimonies of defendants’ three witnesses. The court notes that plaintiff only submitted excerpts of the transcripts of the deposition testimonies of defendants’ three witnesses which made it difficult for this court to get a complete understanding of the testimonies and account of the events described therein. Notwithstanding this failure, upon a close reading of the excerpts submitted, the court found, contrary to plaintiff’s assertions that there were no contradictions amongst the parts of the testimonies it reviewed. Lyons and Watson agreed that a fire occurred before Watson left Centennial’s employment but that the fire did not result in damaged files. Also, both Lyons and Krieger testified that when a light bulb burned out it was replaced by an outside contractor.

Contrary to plaintiff’s assertions, the court did not direct defendants to respond to their post-deposition discovery demands with an affidavit of Lyons. Krieger’s affidavit is sufficient. Krieger states therein that she has access to Lyon’s computer records. Therefore the court finds that she was in a position to search defendants’ records to respond to plaintiff’s demands.

The court notes that it has reviewed, among other submissions, defendants’ responses to plaintiff’s discovery demands dated July 2, 2014 and February 7, 2014 and finds that defendants have responded properly to plaintiff’s demands. The court notes that some of the requests between the two demands were duplicative; nonetheless, defendants responded thereto.

The court notes that defendants have provided insurance contracts and insurance information, photographs and other visual aides depicting the possible area of plaintiff’s fall, the name of the construction company that performed work on the subject premises in July and August 2009 as well as a copy of the construction contract dated September 26, 2008. Defendants stated that no construction work was being done on the date of the accident on the subject building since such work had been completed years earlier. Defendants responded that they are not in possession of any accident report concerning plaintiff’s accident or any reports or prior complaints regarding the subject walkway, they are not in possession of any statements by plaintiff, that they are not aware of any witnesses to the subject accident and that they do not have safety program policies. Regarding plaintiff’s requests for permit applications issued, and any documents filed, with any government authority, as well as any lawsuits filed, regarding the subject premises, defendants properly stated that these, if any, were available to plaintiff directly as public records. Defendants also stated that the electrical contractor, Gilston Electrical, did not do any work on the exterior lights of the subject building during the four years prior to the subject accident. At this juncture and on this record, the court finds that plaintiff has failed to show that an affidavit from Lyons relating to plaintiff’s latest, post-deposition demands is material and necessary to the prosecution of her action.

In light of the foregoing, it is:

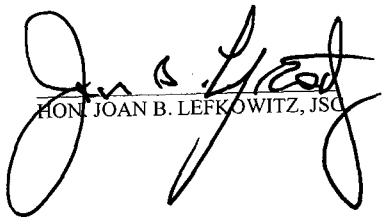
ORDERED that plaintiff's motion for an order compelling defendants to produce an affidavit from Charles Lyons, specifically responding to each and every item of discovery requested by plaintiff in her demand dated May 8, 2014 is denied in its entirety; and it is further,

ORDERED that the parties are directed to appear for a conference in the Compliance Part, Room 800 on October 6, 2014 at 9:30 A.M.; and it is further,

ORDERED that plaintiff is directed to serve a copy of this order upon defendants within seven days of entry.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York  
September 22, 2014



HON. JOAN B. LEFKOWITZ, JSC

To:

Joseph Bove, Esq.  
Della Mura & Ciacci, LLP  
Attorneys for Plaintiff  
981 Allerton Avenue  
Bronx, New York 10469  
**By NYSCEF**

David A. Bourgeois, Esq.  
Smith Mazure Director Wilkins Young & Yagerman, P.C.  
Attorneys for Defendants  
111 John Street 20<sup>th</sup> Floor  
New York, New York 10038  
**By NYSCEF**

cc: Compliance Conference Clerk