

**Vovou v Long Is. Sports Complex, Inc.**

2014 NY Slip Op 33220(U)

May 14, 2014

Supreme Court, Nassau County

Docket Number: 3819-13

Judge: Jerome C. Murphy

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This opinion is uncorrected and not selected for official publication.

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**SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. JEROME C. MURPHY,  
Justice.**

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**NICOLE VOVOU, an infant under the age of  
Fourteen years by her parent and natural guardian  
KIRT VOVOU, and KIRT VOVOU, individually,**

**TRIAL/IAS PART 23  
Index No.: 3819-13  
Motion Date: 2/21/14  
Sequence No.: 001**

**Plaintiffs,**

**- against -**

**DECISION AND ORDER**

**LONG ISLAND SPORTS COMPLEX, INC.,**

**Defendants.**

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The following papers were read on this motion:

Notice of Motion, Affirmation and Exhibits.....	1
Affirmation in Opposition and Exhibits.....	2
Reply Affirmation and Exhibits.....	3

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**PRELIMINARY STATEMENT**

Defendant brings this application for an order (1) pursuant to CPLR §3103(a) granting the defendant a protective order with respect to items 2, 5, 6 and 7 of the plaintiffs' notice for discovery and inspection dated May 22, 2013; and (2) for such other, further and different relief as this Court deems just and proper in the premises.

**BACKGROUND**

This action, filed on March 29, 2013, seeks recovery of damages for personal injuries sustained by plaintiff at the Long Island Sports Complex on November 24, 2012. Plaintiff claims that the flooring at the premises was in a dangerous and defective condition, and that the flooring was wet, a byproduct of Hurricane Sandy, which occurred on October 29, 2013. As a consequence of these conditions, plaintiff alleges that she was caused to slip and fall, and sustained a displaced radial fracture of the left arm, shortening of the radius, ulnar styloid fracture, and displaced fracture of the metaphyseal distal radius.

Plaintiff served a Notice for Discovery and Inspection dated May 22, 2013. (Exh. "J" to

[\* 2]  
Motion). Defendants move for a protective order with respect to items "2", "5", "6" and "7", which are as follows:

2. All claims filed for property damage as a result of and subsequent to Hurricane Sandy which occurred on October 29, 2012;
5. Copies of all inspections done on behalf of defendant of the premises between October 29, 2012 and the date of accident, November 24, 2012;
6. Copies of any and all inspections done by any third parties including plaintiff's property casualty insurance company for damage to the premises subsequent to October 29, 2012;
7. A duly executed authorization to obtain the records from K & K Insurance Group for a property claim, Claim Number AG0050811, Policy Number 9VAIP544750503.

Defendants contend that K & K Insurance Group, Inc. did not pay any claims referable to the turf field, and that its replacement, several weeks after plaintiff's accident, did not have anything to do with the accident.

#### DISCUSSION

Plaintiff's complaint is premised on the theory that the water-damaged turf flooring in the complex was the proximate cause of her injuries. The condition of the floor between October 29 and November 24, 2012 is clearly relevant to the prosecution and defense of the action. Among defendant's most significant contentions is that "'(e)vidence of subsequent repairs and remedial measures is not discoverable or admissible in a negligence case unless there is an issue of maintenance or control.'" <sup>1</sup>

The Court in *Del Vecchio* reversed the determination of the trial court which denied the motion by defendant and third-party plaintiff to compel third-party defendant Saturn of Newburgh, Inc. to produce records of repairs made after the plaintiff fell in a parking lot owned by Danielle Associates and leased by Saturn. The Court premised its reversal on the ground that the material sought by Danielle "may be relevant in determining which entity maintained and controlled the area where the accident allegedly occurred."

Defendants claim, appropriately, that there is no issue of maintenance or control in the

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<sup>1</sup> *Del Vecchio v. Danielle Associates, LLC*, 94 A.D.3d 941, 942 (2d Dept. 2012), quoting *Cleland v. 60-02 Woodside Corp.*, 221 A.D.2d 307, 308 (1996).

[\* 3]

present action. But they miss the point that plaintiff is not seeking information about the replacement turf; rather, she is seeking to ascertain whether or not defendant had notice of a hazardous condition prior to the date of the accident. Without being over-simplistic, if the pedestrian in *Del Vecchio* tripped and fell in a parking lot, and the owner or tenant had performed an inspection for hazardous conditions shortly before the event, it could hardly be argued that the results of the inspection were irrelevant, or should be precluded from discovery.

The provisions of CPLR § 3101 (a)(1) are clear and unambiguous, providing that

(a) Generally. There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent or employee of a party;

...

It is therefore **ORDERED**, as follows

Demand No. 2. To the extent that defendant is in possession of documents in the form of claims for property damages allegedly sustained as a result of Hurricane Sandy, defendants are directed to produce copies to plaintiff;

Demand No.5. To the extent that defendants are in possession of documents prepared as a result of inspections of the premises between October 29, 2012 and November 24, 2012, they are directed to produce copies to plaintiff;

Demand No. 6. To the extent that defendants are in possession of documents prepared by third parties as a result of inspection of the premises between October 29, 2012 and November 24, 2012, they are directed to provide copies to plaintiff;

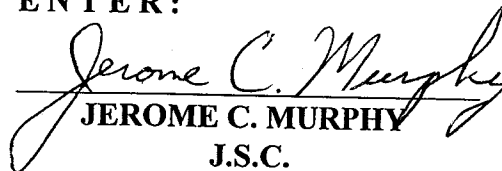
Demand No. 7. While defendants contend that K & K Insurance Group did not make payments for damage to the premises sustained as a result of Hurricane Sandy, defendants are directed to provide a duly executed authorization for the release by K & K Insurance Group, for the purpose of determining the existence of inspection reports made by or on behalf of K & K.

The foregoing documents, to the extent that they are in the possession of defendant, and the authorization for the release of records of K & K Insurance Group shall be provided to plaintiff within 20 days of service of a copy of this Order with Notice of Entry.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York  
May 14, 2014

ENTER:

  
JEROME C. MURPHY  
J.S.C.

**ENTERED**

MAY 15 2014

NASSAU COUNTY  
COUNTY CLERK'S OFFICE