

Richards v Ford Motor Co.

2014 NY Slip Op 33414(U)

December 8, 2014

Supreme Court, Bronx County

Docket Number: 310958/2011

Judge: Laura G. Douglas

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This opinion is uncorrected and not selected for official publication.

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

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NANDA RICHARDS, JUDITH RICHARDS, JOAN
DAVIS-SINGH, DORRETT DAVIDSON as
Administratrix of the Estate of EVELYN
CONSTANTINA SYLVIA FERGUSON, Deceased,
KRISTA KERRIAN WHITE as Administratrix of the
Estate of SIMON WHITE, Deceased, ROBERT REID
as Administrator of the Estate of ELAINE EUTHELMA
REID, Deceased, TRIENA AMELIA McGHIE as
Administratrix of the Estate of TITUS ADOLFUS
McGHIE, Deceased, CHARLENE MANDRIE,
CARLINE WILLIAMS as Administratrix of the Estate
of AVERIL MURRAY-EDWARDS, KEITH
GILLESPIE as Administrator of the Estate of MASIE
GILLESPIE, DONAVON MANDRIE as Administrator
of the Estate of ZELDA WHITE, and MIRIAM
EDWARDS,

Index No.: 310958/2011

DECISION/ORDER

Plaintiffs,

-against-

FORD MOTOR COMPANY, COOPER TIRE &
RUBBER COMPANY, BERNARD
LATTIBEAUDIERE, JOY FELLOWSHIP
CHRISTIAN MINISTRIES, INC., and SURGICAL
AUTO REPAIR, INC.,

Defendants.

-----X
HON. LAURA DOUGLAS:

Motion by defendant Cooper Tire & Rubber Company (“Cooper”) and three cross-motions, respectively, by defendant Ford Motor Company (“Ford”), defendant Surgical Auto Repair, Inc. (“Surgical Auto”), and defendants Bernard Lattibeaudiere and Joy Fellowship Christian Ministries, Inc. (collectively, “Lattineaudiere”) seeking to compel plaintiffs to allow defendants to conduct expert inspections of the motor vehicle involved in the underlying accident, and related relief, are

decided in this decision/order. The motion and cross-motions are granted solely to the extent ordered below, and are otherwise denied.

This is an action for damages for personal injuries and wrongful death sustained by the plaintiffs and their decedents, respectively, in a motor vehicle rollover accident that occurred on or about September 18, 2010, while they were passengers in a 15-passenger church van identified as a 1997 Ford E-350, Vin #1FBJS31S5VHC13636. The allegations include negligence in Ford's design and the driver's handling of the vehicle, which was operated by defendant Bernard Lattibeaudiere and owned by defendant Joy Fellowship Christian Ministries, Inc. The allegations against Surgical Auto include negligence in the repair, service, or inspection of the van. One of the van's tires, manufactured by Cooper, is alleged to have failed due to tread separation.

After the accident, the van came into the custody of the New York State Police, until it was released to plaintiff Joan Davis-Singh and her attorneys (the firm of Lipsig, Shapey, Manus & Moverman, P.C.), "to be transported and moved to a storage facility" pursuant to an Order issued on March 30, 2011 by the Honorable Cynthia S. Kern in the Supreme Court in New York County. Accordingly, plaintiff arranged to transport the vehicle from the New York State Police Barracks to an evidence storage facility, namely, Evidence Storage, Inc., located in Pennsylvania, about 1½ hours from New York City. Plaintiffs have since been paying the monthly storage fee charges.

CPLR Rule 3120 provides that: "After commencement of an action, any party may serve on any other party a notice ... (I) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served."

Plaintiffs do not object to allowing the defendants to inspect the vehicle at this facility, but

seek certain conditions, namely, that plaintiffs be present during the defendants' inspections, that persons in attendance at inspections identify themselves by signing in, and that inspections be videotaped (without audio) by Evidence Storage, Inc. Defendants Ford and Surgical Auto do not object to these conditions, as long as the same rules apply to all parties, including plaintiffs. Defendant Cooper seeks to conduct its inspection in private, and does not wish to disclose the identity of its examining experts.

In a wrongful death action alleging a defective tire, the Appellate Division, First Department, held that the plaintiff's chosen expert may be present at the defendant's examination to prevent any abuse in the testing and to ensure that the tire is not destroyed (*see Dunne v. Zene*, 88 AD2d 539 [1st Dept 1982]; *see also DiGiovanni v. Pepsico, Inc.*, 120 AD2d 413 [1st Dept 1986]).

In support of their position, plaintiffs submit an affidavit from Michael Markuszewski, the President of Evidence Storage, Inc. Mr. Markuszewski confirms that the preservation of evidence is his company's objective and responsibility and, to that end, they follow certain guidelines and maintain certain policies. These policies include videotaping inspections made by opposing investigators, but not inspections made by their clients. Mr. Markuszewski adds that his company's goal is to upgrade to an electronic system, whereby all investigations are videotaped. Finally, Mr. Markuszewski states that all investigators who inspect evidence at the facility must sign in, unless this is specifically waived by the entity who owns the evidence.

Under these circumstances, the same rules shall apply equally to all parties and the motion and cross-motions are granted as follows:

Each party is authorized to conduct an expert inspection of the subject vehicle at the Evidence Storage, Inc. facility, within 90 days from the date of this Order. Any inspection shall not

taint or destroy the subject vehicle, in whole or in part. Plaintiffs' counsel shall forthwith take the lead in scheduling the inspection(s), and counsel shall cooperate with each other to schedule dates that are mutually convenient to all parties and to Evidence Storage, Inc. Each party, by its designated representative(s), is entitled to be present at the time of each inspection, including at any future inspection made by plaintiffs. For security reasons, the parties and their designated representatives, including plaintiffs, who are in attendance at inspections shall identify themselves by presenting proper identification and signing a Sign-In Sheet in compliance with Evidence Storage, Inc.'s protocol. Each inspection, including any future inspection made by plaintiffs, may be videotaped, without audio, by Evidence Storage, Inc. and videotaped and photographed by each party. Plaintiffs' counsel shall so advise Evidence Storage, Inc.¹ The examining defendant(s) shall reimburse Evidence Storage, Inc. for all reasonable costs related to the inspection(s).

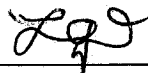
Such measures have been implemented to support the preservation of the evidence. In a case involving the testing of an alleged defective car battery, the defendants were allowed to be present during the plaintiff's inspection, and the Court held that "to adequately safeguard the defendants' rights, and to enable the jury to ascertain the original condition of the battery, the defendants should be permitted to have a representative present when the inspection and testing is conducted (*see Dina v Lutheran Med. Ctr.*, 156 AD2d 421) and **to examine, photograph, and videotape the battery before and after each stage of testing.**" [emphasis supplied] *Burley v. Sears Roebuck & Co.*, 226 AD2d 494 [2nd Dept 1996].

¹ Since it appears that plaintiffs will have access to Evidence Storage, Inc.'s videotapes and sign-in sheets, plaintiffs shall provide these items to any parties requesting the same.

To ensure a level playing field, the plaintiffs shall provide all parties with copies of the videotape(s), if any, of any inspections made by them, the identity of the individual(s) who inspected the vehicle, and the date(s) of inspection (*see Rahman v. Pollari*, 107 AD3d 452 [1st Dept 2013]).

This constitutes the decision and order of this Court.

Dated: December 8, 2014



HON. LAURA G. DOUGLAS
J.S.C.