

Rivera v New York City Hous. Auth.

2016 NY Slip Op 30804(U)

April 29, 2016

Supreme Court, New York County

Docket Number: 156895/2012

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

MARIA RIVERA,

INDEX NO. 156895/2012
MOTION DATE 03-16-2016

Plaintiff,
-against-

MOTION SEQ. NO. 001
MOTION CAL. NO. _____

NEW YORK CITY HOUSING AUTHORITY
Defendant.

The following papers, numbered 1 to 7 were read on this motion to compel discovery.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	<u>1 - 4</u>
Answering Affidavits – Exhibits _____	<u>5 - 6</u>
Replying Affidavits _____	<u>7</u>
Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiff’s motion to compel Defendant to produce a knowledgeable witness for a further deposition, or to preclude Defendant from offering proof at trial on the issue of liability, is granted to the extent stated herein.

Plaintiff commenced the instant action by Summons and Verified Complaint on October 3, 2012, for personal injuries sustained in an alleged trip and fall on March 5, 2012, on an exterior walkway located at 55 East 102nd Street, New York, New York (herein “the building”). Issue was joined and the parties proceeded with discovery.

Defendant produced their witness, Mr. Armando Palma, Superintendent for Defendant assigned to the Carver Houses, which includes the subject building. Mr. Palma testified as to his duties on the job, the records he personally maintained regarding any problems on the property that needed to be addressed, the fact that inspections for exterior walkways do not have a specific inspection process other than his observance of the exterior areas of the buildings, the process for addressing defects on outdoor walkways that needed fixing, and to the organization of maintenance personnel and who was brought in to fix any defects. (Mot. Exh. 4, PP 8-13).

Mr. Palma also testified that he did not remember the condition of the subject walkway at the time plaintiff is alleged to have tripped and fell (Mot. Exh. 4 PP 14-15), and refers to Housing and Urban Development hiring contractors to perform inspections of the subject walkway but there is no indication as to dates when this occurred. (Id. PP 15-16).

In This Court’s Status Conference Order of May 13, 2015, Plaintiff was directed to “serve any further demand for additional EBT of NYCHA w/in 30 days.” (Mot. Exh. 5). Plaintiff contends that in order to determine a knowledgeable witness for deposition, Plaintiff served Defendant with a Further Notice for Discovery and Inspection on June 10, 2015, which demanded the production of names and last known addresses of any

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

maintenance workers who have knowledge of the subject sidewalk on or before the date of the accident, March 5, 2012. (Mot. Exh. 6). Defendant responded to this Further Notice for Discovery and Inspection by objecting to the demand as palpably improper, overly broad, unduly burdensome, and duplicative of Plaintiff's April 23, 2014 demand to which Defendant responded on May 22, 2014, by naming Armando Palma as a witness. (Mot. Exh. 7).

This Court's Status Conference Order of July 29, 2015, directed Defendant to respond to Plaintiff's Further Notice for Discovery and Inspection, dated June 10, 2015, and Plaintiff was to serve a notice for a further deposition of Defendant. (Mot. Exh. 8). On August 5, 2015, Plaintiff served Defendant with a Further Notice for Discovery and Inspection demanding the production of names and last known addresses for any and all NYCHA maintenance workers or employees who worked at and/or reported to work at the Carver Houses, 55 East 102nd Street, New York, New York, for two years prior and up to the date of the accident. (Mot. Exh. 9). Plaintiff also demanded copies of any log books and/or records of employees who performed maintenance work on the subject location two years prior and up to the date of the accident in order to determine a person with notice of the defect. (Id.) Defendant objected to these demands as palpably improper, overly broad, unduly burdensome, and duplicative of Plaintiff's April 23, 2014 demand to which Defendant responded on May 22, 2014, by disclosing the supervisor of grounds' logbook and the superintendent's notebook. (Mot. Exh. 10). Status Conference Orders dated November 4, 2015, and December 16, 2015, directed Defendant to respond to Plaintiff's Further Notice for Discovery and Inspection of August 5, 2015.

Plaintiff now moves for an Order pursuant to CPLR 3124 compelling plaintiff to produce a knowledgeable witness for a further deposition, and CPLR 3126 precluding Defendant from offering any proof at trial in the form of testimony, or otherwise, regarding the issue of liability due to Defendant's failure to adequately respond to Plaintiff's additional demands. Plaintiff argues that because Mr. Palma lacked sufficient personal knowledge about the area and defect in question, Plaintiff was entitled to a deposition of another witness produced by Defendant.

Defendant opposes Plaintiff's motion arguing that it already produced a witness and that Plaintiff fails to establish that Mr. Palma did not have sufficient knowledge. Defendant also argues that it did in fact respond, as directed in This Court's Orders, to Plaintiff's demands and that the Orders did not specifically direct Defendant to produce any witness or documents, only to respond to the demands. Defendant attaches to its opposition papers its further response to This Court's Conference Order of December 16, 2015, which was served on Plaintiff on January 19, 2016. This response contains an Affidavit of Mr. Palma, to which he states there was no Supervisor of Grounds nor a Supervisor of Caretakers for the building on the date of the accident, that the only documents kept regarding maintenance work performed on the grounds were specific work orders, the Supervisor of Grounds' Logbook and his personal notebook. (Aff. In Opp. Exh. S). Further, Mr. Palma states that he reviewed his personal notebook, the Supervisor of Grounds' Logbook and conducted a search for any work tickets concerning the subject walkway, and nothing concerning repairs or defects of the subject walkway was revealed. (Id.) Defendant argues that all it has provided is sufficient, therefore barring Plaintiff the right to an additional deposition of Defendant.

Pursuant to CPLR § 3124, the Court may compel compliance upon failure of a party to provide discovery. It is within the Court's discretion to determine whether the materials sought are "material and necessary" as legitimate subject of inquiry or are being used for purposes of harassment to ascertain the existence of evidence (see *Roman Catholic Church of the Good Shepherd v. Tempco Systems*, 202 A.D. 2d 257, 608 N.Y.S. 2d 647 [1st Dept., 1994]). "The words 'material and necessary' as used in section 3101 must 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" (*Kapon v. Koch*, 23 N.Y.3d 32, 38, 11 N.E.3d 709, 988 N.Y.S.2d 559 [2014] citing to, *Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d 403, 406, 288 N.Y.S.2d 449, 452, 235 N.E.2d 430, 432 [1968]). Where "discovery demands are palpably improper in that they are overbroad, lack specificity, or seek irrelevant or confidential information, the appropriate remedy is to vacate the entire demand rather than to prune it" (*Bell v. Cobble Hill Health Center, Inc.*, 22 A.D.3d 620, 621, 804 N.Y.S.2d 362, 363 [2nd Dept., 2005]; see *Ural v. Encompass Ins. Co. of America*, 97 A.D.3d 562, 948 N.Y.S.2d 621 [2nd Dept., 2012]).

Plaintiff's discovery requests are not overbroad or unduly burdensome. Plaintiff requests names and last known addresses of "any and all NYCHA maintenance workers or employees who worked at and/or reported to work at [the building] 2 years prior and up to March 5, 2012," the date of the alleged trip and fall. Plaintiff also requests "copies of logbooks and/or records of employees who performed maintenance work on said location two years prior and up to March 5, 2012." This request is for a specified period of time and concerns those individuals who were employed by Defendant to perform maintenance work at the location in question. This information is directly related to plaintiff's claims as determining someone with knowledge of the area where plaintiff is alleged to have fell. Defendant's initial witness, Mr. Palma, stated that he did not remember the area in question, thereby confirming that he lacks sufficient knowledge.

Plaintiff seeks to depose an individual who worked and performed maintenance of the subject area two years prior to and including the date of the incident. Without Defendant providing the names or logs of the individuals who performed maintenance at this location and during this time, Plaintiff will not be able to name a witness for an additional deposition of Defendant. Where a witness produced acknowledges "by his own admission he had no personal knowledge of the condition...or any work needed...prior to the incident, [then] [c]learly, plaintiff has made the necessary 'detailed showing' of the necessity for taking the depositions of [the] maintenance workers." (*Tolliver v. New York City Housing Authority*, 225 A.D.2d 412, 640 N.Y.S.2d 491 [1st Dept. 1996], citing *Colicchio v. City of New York* 181 A.D.2d 528, 529, 581 N.Y.S.2d 36 [1st Dept. 1992]).

Accordingly, it is ORDERED, that Plaintiff's motion to compel Defendant to produce a knowledgeable witness for a further deposition, or to preclude Defendant from offering proof at trial on the issue of liability, is granted, and it is further,

ORDERED, that Defendant provide the names and last known addresses of any and all maintenance workers, and any log books and/or records of employees who performed maintenance work at the Carver Houses, 55 East 102nd Street, New York, New York, for the two years prior and leading up to March 5, 2012, within thirty (30) days of the service of this Order with Notice of Entry pursuant to e-filing protocol, and it is further,

ORDERED, that failure of Defendant to provide the names and last known addresses of any and all maintenance workers, and any log books and/or records of employees who performed maintenance work at 55 East 102nd Street, New York, New York, for the two years prior and leading up to March 5, 2012, will result in preclusion from testifying at the time of trial as to the issue of liability, and it is further,

ORDERED, that the parties appear for a Conference in IAS Part 13 located at 71 Thomas St., Room 210, New York, N.Y. on June 22, 2016, at 9:30 a.m.

ENTER:

MANUEL J. MENDEZ
J.S.C.



MANUEL J. MENDEZ
J.S.C.

Dated: April 29, 2016

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE