Gramling v Chelsea Piers L.P.
2016 NY Slip Op 31280(U)
July 7, 2016
Supreme Court, New York County
Docket Number: 158119/2014
Judge: Manuel J. Mendez

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

JILLIAN GRAMLING,
Plaintiff,

-against-

CHELSEA PIERS L.P., a Limited Partnership, Individually and d/b/a FIELD HOUSE at CHELSEA PIERS, CHELSEA PIERS MANAGEMENT, INC. Individually and d/b/a FIELD HOUSE at CHELSEA PIERS and "JOHN DOE", the true name and identity of a Gymnastic Coach being unknown,
Defendants.

INDEX NO. 158119/2014
MOTION DATE 06-8-2016
MOTION SEQ. NO. 001
MOTION CAL. NO.

The following papers, numbered 1 to 6 were read on this motion to compel discovery.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 3
Answering Affidavits — Exhibits	4 - 5
Replying Affidavits	6

Cross-Motion: ☐ Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiff's motion to compel discovery is, granted to the extent stated herein.

Plaintiff commenced this action to recover damages for personal injuries she sustained on April 24, 2013, when she fell while participating in an Adult Beginner's Gymnastic Class at Chelsea Piers (herein "the Class"). Plaintiff alleges, among other things, that the three coaches employed by Chelsea Piers L.P., a limited Partnership, Individually and d/b/a Field House at Chelsea Piers, Chelsea Piers Management, Inc. Individually and d/b/a Field House at Chelsea Piers (herein collectively "Defendant Chelsea), who were teaching the Class failed to properly instruct, supervise and/or spot the plaintiff as she attempted to perform a front handspring. Issue was joined and the parties proceeded with discovery.

Plaintiff now moves for an Order pursuant to CPLR §3124 compelling the defendants to produce outstanding discovery items pertaining to employee records, and to compel defendants to produce the coaches who were present in the gymnasium at the time of Plaintiff's accident for additional depositions. Defendants oppose the motion.

Defendants originally produced for deposition Ms. Kimberly Rich, the manager on duty at the gymnasium on the date of plaintiff's accident. Plaintiff contends that Ms. Rich testified that she did not witness the accident, was not in the gymnasium at the time of the accident, only learned of the accident after speaking with the coaches, and could not recall the substance of the post-accident conversations she had with the coaches. (Mot. Exh. J). Plaintiff argues that this entitles her to depositions of Aleksandr Semin and Dennis Desormier, two of the three coaches identified by Defendants as present in the gymnasium at the time of Plaintiff's accident. The third

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

coach, Damir Mouzdybaev, is no longer Defendants' employee and is currently living in Nevada. Additionally, Plaintiff contends that Ms. Rich's testimony that the Chelsea Piers' instructor's guidelines provides that for safety reasons the coaches must have all students within their field of vision at all times and that students cannot perform skill maneuvers behind the instructor's back, poses legitimate avenues of inquiry for a deposition of the coaches present and instructing the Class at the time of Plaintiff's accident.

In opposition, the Defendants argue that the Plaintiff is not entitled to these additional depositions because a competent witness has already been produced and Plaintiff has not shown that Ms. Rich had insufficient knowledge, or that the persons sought to be deposed posses material and necessary information. Specifically, Defendants contend that Ms. Rich testified thoroughly as to her coaching/employment background (Mot. Exh. J at pp 7-52), the beginner/intermediate adult gymnastics program at Chelsea Piers (Id. at pp. 53-87), information about the coaching staff present on the evening of Plaintiff's accident (Id. at pp. 88-100), and information about the accident and her investigation (Id. at pp 100-146). Further, Defendants state that depositions of their two employee coaches would be a waste of time. Provided with the opposition papers are boiler plate affidavits from both Mr. Semin and Mr. Desormier attesting to their lack of knowledge of any facts surrounding the circumstances of Plaintiff's fall.

Plaintiff also seeks to compel the Defendants to provide Ms. Rich's resume in order to establish her qualifications, as well as the employee folders for the three coaches (Mr. Semin, Mr. Mouzdybaev, and Mr. Desormier), the assistant manager Hector Salazar, and the front-end manager Junior Santiago in order to establish their experience/expertise and fitness/ability to coach, whether or not they had their Safety Certification from USA Gymnastics, and whether or not the three coaches in question had ever been subjected to any disciplinary action regarding their coaching services.

Defendants oppose having to turn over the employee files arguing that if the Plaintiff is seeking information relevant to the coaches' certifications, the Plaintiff is free to serve a Notice for Discovery and Inspection identifying just that, otherwise to provide access to the complete employee files of the three coaches and the two managers who were not even in the gym at the time of the accident would be an invasion of privacy.

CPLR § 3101(a) allows for the "full disclosure of all evidence material and necessary in the prosecution or defense of an action regardless of the burden of proof." CPLR § 3124 grants the court the power to compel a party to provide discovery demanded.

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 Shepard 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]).

"It is well established that a corporation has the right in the first instance to determine which of its representatives will appear for an examination before trial" (Barone v. Great Atlantic & Pacific Tea Co., 260 A.D.2d 417, 687 N.Y.S.2d 718 [2nd Dept., 1999]). A party "seeking additional depositions has the burden of demonstrating '(1) that the representatives already deposed had insufficient knowledge, or were otherwise inadequate, and (2) there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case.'" (Gomez v. State of New York, 106 A.D.3d 870, 965 N.Y.S.2d 542 [2nd Dept. 2013], citing Zollner, et al., v. City of New York, et al., 204 A.D.2d 626, 612 N.Y.S.2d 627 [2nd Dept. 1994]).

A review of Ms. Rich's deposition transcript shows that in the majority of the answers given regarding her knowledge about the accident and any post-accident investigation or conversations with employees, she either could not recall, or made a general statement as to what would have been done or what was done in student injury situations. No sufficient answers were given as to the circumstances surrounding Plaintiff's accident, or any substantive information obtained from any of the coaches who had personal knowledge of facts pertaining to the accident. The Plaintiff is entitled to a deposition of an individual who was present, or at least has sufficient knowledge to testify as to the circumstances surrounding Plaintiff's fall.

Assistant Manager Hector Salazar was recently produced by the Defendants for a deposition. Plaintiff contends that Mr. Salazar testified that the only coach still employed by Defendant Chelsea who was coaching the Class on the night of Plaintiff's accident is Aleksandr Semin. Mr. Desormier and Mr. Mouzdybaev are no longer employees. Therefore, Mr. Semin shall be produced in order to testify as to any knowledge or information he may have surrounding the circumstances of Plaintiff's accident. Even though Defendants provide an affidavit by Mr. Desormier stating that he is still an employee of Defendant Chelsea, Mr. Salazar testified otherwise. Mr. Desormier must be produced for a deposition, but to the extent Mr. Desormier is no longer an employee of Defendant Chelsea, Defendants must provide his last known address. The same goes for Mr. Mouzdybaev. Plaintiff is entitled to the last known address of Mr. Mouzdybaev, as he is no longer employed by Defendant Chelsea, so Plaintiff may serve him with a subpoena.

As for the employee records, Plaintiff has not stated a basis to compel the Defendants to turn over the employee files of Mr. Salazar or Mr. Santiago, especially since they were not within the gymnasium, nor coaching the Plaintiff at the time of her accident. However, Plaintiff is entitled to proof of Certifications of the three coaches, as well as any evidence of disciplinary actions regarding their coaching services. Plaintiff's request for the general file of the employees' records is too broad. (Mot. Exh. B- Notice to Produce). Plaintiff needs to serve a demand that is tailored to the information she seeks, otherwise the information sought could result in the production of confidential and/or irrelevant employee personal information.

Accordingly, it is ORDERED, that Plaintiff's motion to compel discovery is granted as follows,

-Defendant Chelsea is to produce Aleksandr Semin for a deposition within thirty (30) days from the date of service of a copy of this Order with Notice of Entry,

-Defendant Chelsea is to produce Dennis Desormier for a deposition within thirty (30) days from the date of service of a copy of this Order with Notice of Entry to the extent that Mr. Desormier is still within the employ of Defendant Chelsea, otherwise

-Defendant Chelsea is to provide the last known address of Dennis Desormier to Plaintiff within twenty (20) days from the date of service of a copy of this Order with Notice of Entry,

-Defendant Chelsea is to provide the last known address of Damir Mouzdybaev to Plaintiff within twenty (20) days from the date of service of a copy of this Order with Notice of Entry, and it is further,

ORDERED, that the remainder of the relief requested is denied, and it is further,

ORDERED, that the parties appear for a Status Conference in IAS Part 13 located at 71 Thomas St. , Room 210, New York, N.Y. on September 21, 2016 at 9:30 a.m.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: July 7, 2016

MANUEL J. MENDEZ
J.S.C.

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE