

Wahl v Douglaston Dev. Corp.
2016 NY Slip Op 32604(U)
December 7, 2016
Supreme Court, New York County
Docket Number: 155625/2015
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 43

-----X
BRENDAN WAHL and JAMIE WAHL,

Plaintiffs,

-against-

Index No. 155625/2015
DECISION/ORDER

DOUGLASTON DEVELOPMENT CORP. and LEVINE
BUILDERS

Defendants.

-----X
ROBERT R. REED, J.

In this action by plaintiffs to recover for personal injuries allegedly sustained by Brendan Wahl, a metal latherer by trade, who was allegedly injured on May 12, 2015 while working at a construction project located at 2 North 6th Street, Brooklyn, NY. Defendants, Douglaston Development Corp. and Levine Builders, move, pursuant to CPLR 3103, for a protective order against a notice to admit served by plaintiffs. Defendants' motion is granted in part and denied in part.

On May 23, 2016, plaintiffs served defendants with a notice to admit seeking written admissions to the following:

1. That at all times herein mentioned, the defendant, Douglaston Development Corp., was the owner of premises under located at 2 North Sixth Street, Williamsburg, Brooklyn, New York.
2. That at all times herein mentioned, the defendant, Douglaston Development Corp., was the owner of premises under located at 2 North Sixth Street, Williamsburg, Brooklyn, New York on May 12, 2015.

3. That at all times herein mentioned, the defendant, and J.E. Levine Builder Inc. i/s/h/a Levine Builders was the general contractor at the premises under construction located at 2 North Sixth Street, Williamsburg, Brooklyn, New York.
4. That at all times herein mentioned, the defendant, and J.E. Levine Builder Inc. i/s/h/a Levine Builders was the general contractor at the premises under construction located at 2 North Sixth Street, Williamsburg, Brooklyn, New York on May 12, 2015.
5. That at all times herein mentioned, the defendant, and J.E. Levine Builder Inc. i/s/h/a Levine Builders was the construction manager at the premises under construction located at 2 North Sixth Street, Williamsburg, Brooklyn, New York.
6. That at all times herein mentioned, the defendant, and J.E. Levine Builder Inc. i/s/h/a Levine Builders was the construction manager at the premises under construction located at 2 North Sixth Street, Williamsburg, Brooklyn, New York on May 12, 2015.
7. That at all times herein mentioned, the defendant, Douglaston Development Corp. entered into a contract with LMC Specialties for LMC Specialties to perform work, labor and services at the aforesaid premises.
8. That at all times herein mentioned, the defendant, Douglaston Development Corp. entered into a contract with LMC Specialties for LMC Specialties to perform work, labor and services at the aforesaid premises on May 12, 2015.
9. That at all times herein mentioned, the defendant, J.E. Levine Builder Inc. i/s/h/a Levine Builders entered into a contract with LMC Specialties for LMC Specialties to perform work, labor and services at the aforesaid premises.
10. That at all times herein mentioned, the defendant, J.E. Levine Builder Inc. i/s/h/a Levine Builders entered into a contract with LMC Specialties for LMC Specialties to perform work, labor and services at the aforesaid premises.

Defendant argues that this motion for a protective order must be granted since the notice to admit improperly seeks admissions to ultimate questions of fact which must be decided at trial.

CPLR 3123(a) permits the service of a request for admission “of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry.” “[T]he purpose of a notice to admit is only to eliminate from contention those matters which are not in dispute in the litigation and which may be readily disposed of (citations omitted).” *32nd Ave. LLC v Angelo Holding Corp.*, 134 AD3d 696, 698; *see also Wolin v St. Vincent's Hosp. & Med. Ctr. Of N.Y.*, 304 AD2d 348; *Taylor v Blair*, 116 AD2d 204. “Thus, a notice to admit may not be utilized to request admission of material issues or ultimate or conclusory facts (*Villa v New York City Hous. Auth.*, 107 AD2d 619, 620; *Felice v St. Agnes Hosp.*, 65 AD2d 388, 395-396), which can only be resolved after trial.” *Taylor v Blair*, 116 AD2d at 206.

Here, defendants correctly assert that several of the requests included in the May 23, 2016 notice to admit served by plaintiffs are patently improper insofar as they seek admissions as to ultimate issues of fact (*See Ramcharran v New York Airport Servs., LLC*, 108 AD3d 610).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that defendants' motion for a protective order is granted in part and denied in part; and it is further

ORDERED that requests 1, 3, 5, 7, 9, and 10 of plaintiffs' notice to admitted dated May 23, 2016 are stricken; and it is further

ORDERED that counsel are directed to appear for a status conference in Part 43, Room 581, at 111 Centre Street, on January 12, 2017, at 2:30 p.m.

Dated: December 7, 2016

ENTER:

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

J.S.C.