

Cutler v Thomas

2016 NY Slip Op 32786(U)

October 20, 2016

Supreme Court, Westchester County

Docket Number: 59436/2013

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----x
ALBERT J. CUTLER and EMMA F. CUTLER,

Plaintiffs,

-against-

STELLA J. THOMAS and MICHAEL P. THOMAS,

Defendants.

-----x
STELLA J. THOMAS and MICHAEL P. THOMAS,

Third-Party Plaintiffs,

-against-

CLAUDE STALEY, CENTRAL RESTORATION &
DEVELOPMENT CORP., and 9 CLOVERDALE LANE
CORP.,

Third-Party Defendants.

-----x
LEFKOWITZ, J.

The following papers were read on this motion by third-party defendants, Claude Staley and 9 Cloverdale Lane Corp. (hereinafter "movants or Staley"), for an order compelling defendants/third-party plaintiffs Stella J. Thomas and Michael P. Thomas¹ (hereinafter "defendants") to produce records regarding construction, maintenance and repairs to the exterior of the subject house.

Order to Show Cause - Affirmation in Support - Exhibits A-O - Affidavit of Service
Affirmation in Opposition - Exhibits A-D - Affidavit of Service

Upon the foregoing papers and upon the proceedings held on October 20, 2016, the motion is determined as follows:

Plaintiffs Albert J. Cutler and Emma F. Cutler commenced this action by filing a summons and complaint on or about June 19, 2013, against defendants. In their complaint, plaintiffs allege that on November 1, 2011, plaintiff Albert Cutler sustained injuries to his ankle when he slipped and fell as he was walking on a plywood ramp outside of defendants' home.

¹ Michael P. Thomas died on August 25, 1999, prior to the institution of the action.

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Issue was joined on or about July 12, 2013. Third-party defendants were impleaded on or about January 2, 2015. Third-party defendants appeared in the action by service of a verified answer on or about February 27, 2015. Third-party defendant Central Restoration and Development Corp. (hereinafter "CRDC") has not appeared in the action.

Defendant Stella Thomas was deposed on two separate occasions. According to defendants, at her deposition, Mrs. Thomas testified that third-party defendant Claude Staley had installed the wooden ramp 25 years earlier and in 2009, had replaced the ramp. Defendants also note that Mrs. Thomas also testified that during the years leading up to plaintiff's accident, she had roofing, siding and painting projects done at the home by other contractors and that she had kept all records with regard to the contractors who completed work at her home in a file at her home. However, her file did not include any record of the work conducted by third-party defendant Mr. Staley.

Movants served post-deposition demands seeking a complete copy of the house file maintained by Mrs. Thomas and copies of all records relating to the care and maintenance of the home. Defendants objected to this demand as vague, overbroad and calling for irrelevant and immaterial information. After a compliance conference, this Court directed defendants to supplement their responses to items 3 and 4 of movants' post-deposition demands, limited to records regarding the care, maintenance and repair of the ramp. Defendants served a supplemental response stating there were no records regarding the care, maintenance and repair of the subject ramp.

Additional compliance conferences were held, at which movants sought a complete copy of the house file maintained by Mrs. Thomas. Since the parties were unable to resolve this issue, the Court issued a briefing schedule for movants to file a motion with respect to this issue. By Decision and Order dated August 8, 2016 (Hon. Joan B. Lefkowitz, J.S.C.), the motion was denied for failure to serve third-party defendant CRDC.

Thereafter, the parties appeared at another compliance conference, after which the Court issued a compliance order directing movants to serve a supplemental demand for records regarding the care, maintenance and repair of the exterior portions of the home and directing plaintiffs to serve a response to movants' supplemental demand. Movants served a supplemental demand requesting copies of any and all records maintained by Mrs. Thomas with regard to the maintenance, care and/or repair of the exterior of the home. Defendants objected to movants' demands as vague, overbroad, unduly burdensome and calling for irrelevant and immaterial information that is not calculated to lead to the discovery of admissible evidence. A briefing schedule was thereafter issued for the instant motion.

By the instant motion, movants seek to compel defendants to produce records regarding construction, maintenance and repairs to the exterior of the subject home as testified to by defendant Stella Thomas at her deposition. Movants argue that the requested documents are material and necessary since third-party defendant Mr. Staley denied completing the repair and replacement of the subject ramp and defendant Mrs. Thomas lacks any type of documentation that corroborates her claim that Mr. Staley installed and replaced the subject ramp. Movants argue that Mrs. Thomas' house file is necessary in order to: (1) investigate and develop the defense that another contractor actually completed the repair and replacement of the subject ramp; (2) determine whether the work done on the exterior of the home could have impacted the

integrity of the ramp or required movement of the ramp; and (3) determine how often and by whom the ramp was being used.

Defendants have opposed the motion, arguing that they responded to movants' supplemental demands for records regarding the care, maintenance and repair of the subject ramp. Defendants' supplemental response indicated that Mrs. Thomas did not have any information or records regarding the care, maintenance and repair of the subject ramp. Defendants note further that they have provided movants with the names, addresses and contact information for seven contractors who did work in and around Mrs. Thomas' home from 1999 to 2011, and a copy of an appraisal performed on the home after Mr. Thomas' death. Defendants argue that movants' demands for Mrs. Thomas' entire house file are objectionable and merely a fishing expedition.

Analysis

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "to 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. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Foster*, 74 AD3d at 1140; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The party seeking disclosure has the burden to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims (*Foster*, 74 AD3d at 1140). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

In the case at bar, movants have failed to demonstrate that the demanded discovery is material or relevant to the issues in the action, or will lead to information bearing on movants' claim. In response to movants' supplemental demand requesting records regarding the care, maintenance and repair of the subject ramp, defendants indicated they had no such records. Defendants also note that Mrs. Thomas testified at her deposition that she had no repair records from third-party defendant Claude Staley and testified extensively as to all of the other work done at her home, none of which involved the ramp. Further, as contended by defendants, the house file, which contains copies of repair records to parts of the home other than the location where plaintiff's accident occurred, are not relevant or probative as to any of the issues in this action. The repair records with respect to other portions of the home are irrelevant to the care, maintenance and repair of the subject ramp. Moreover, movants have failed to establish how the discovery of these other repair records will lead to relevant evidence. Although movants argue that compelling production of Mrs. Thomas' entire house file will enable them, inter alia, to investigate and develop the defense that another contractor actually completed the repair and replacement of the subject ramp or to determine whether the work done on the exterior of the home could have impacted the integrity of the ramp, it is undisputed that defendants provided

movants with the names, addresses and contact information for the seven contractors who did work in and around Mrs. Thomas' home from 1999 to 2011. Accordingly, the instant motion must be denied.

In view of the foregoing, it is

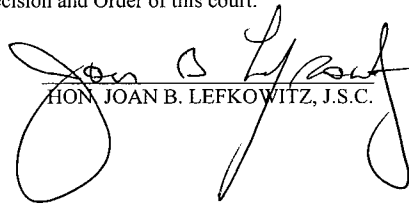
ORDERED that the motion is denied in its entirety; and it is further

ORDERED that movants shall serve a copy of this order with notice of entry on all parties within ten (10) days of entry and shall file proof of service on the NYSCEF website within five (5) days of service; and it is further

ORDERED that the parties are directed to appear for a conference in the Compliance Part, Room 800, on November 7, 2016, at 9:30 A.M., at which time it is contemplated that a Trial Readiness Order will issue.

The foregoing constitutes the Decision and Order of this court.

Dated: White Plains, New York
October 20, 2016



HON. JOAN B. LEFKOWITZ, J.S.C.

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cc: Compliance Part Clerk