

Estate of Bowen v City of New York
2016 NY Slip Op 32950(U)
January 15, 2016
Supreme Court, New York County
Docket Number: 113317/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

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ESTATE OF ROBERT EMMETT BOWEN, III, by and
through the Estate Administrator, AMY LEMMON BOWEN,
and AMY LEMMON BOWEN, on her own behalf and on
behalf of her minor children,

Plaintiffs,

Index No. 113317/11

- against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF TRANSPORTATION, and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendants.

----- X
AMY LEMMON BOWEN as Administrator of the
ESTATE OF ROBERT EMMETT BOWEN, III, and
AMY LEMMON BOWEN, individually,

FILED

Plaintiffs,

Index No. 153988/12

FEB 24 2016

-against-

TRI STATE HAULERS INC., FREDERICK STAIR JR. and VERIZON NEW YORK, INC.,

Defendants.

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DONNA M. MILLS, J.:

The City of New York, New York City Department of Transportation, and New York City Department of Environmental Protection (together City) move, pursuant to CPLR 3103, for a protective order with respect to defendants Tri State Haulers, Inc. and Frederick Stair, Jr.'s notice for discovery and inspection dated May 4, 2015.

This is an action to recover damages for the wrongful death of a bicyclist, Robert Emmett

Bowen, III, who was struck and killed, near the entrance to the Queensboro Bridge at 2nd Avenue and 59th Street in Manhattan, by a truck owned by Tri State Haulers Inc. and driven by Frederick Stair Jr.

In support of its motion for a protective order, the City alleges that it has been served by Tri State Haulers Inc. and Frederick Stair Jr. with a notice for discovery and inspection seeking traffic light sequences, and block segment, roadway, and sidewalk searches, all pertaining to the subject intersection. The City argues that the plaintiffs' bill of particulars does not contain any allegations with regard to the traffic signals, and the block segment, roadway and sidewalk search requests are not limited to a specific time period.

In opposition to the motion, plaintiffs argue that their claims encompass failing to maintain a safe passageway for bicycles and pedestrians.

Also in opposition to the motion for a protective order, defendants Tri State Haulers Inc. and Frederick Stair Jr. argue that their notice for discovery and inspection merely follows up on the deposition testimony of the witness from the City, by requesting the documents referred to by the witness.

There shall be "full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR 3101 [a]). "The test is one of usefulness and reason" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). The burden of establishing any right to protection is on the party asserting it, and the protection must be narrowly construed consistent with the purposes underlying the immunity (*Matter of Priest v Hennessy*, 51 NY2d 62, 69 [1980]). "[T]here is a strong preference in our law that matters be decided on their merits" (*Catarine v Beth Israel Med. Ctr.*, 290 AD2d 213, 215 [1st Dept 2002]).

Contrary to the City's assertion, the complaint clearly claims, at paragraphs 17 and 24

that:

“defendants owed a duty to the deceased plaintiff ... to insure that any maintenance or repair work at or near the Bridge Intersection be carried out in a safe manner, with proper traffic warnings, lighting and signage” [and] “defendants had actual and constructive notice of the unsafe and hazardous traffic conditions and traffic pattern and of the highway design flaws at the Bridge Intersection. Defendants owed a duty to the deceased plaintiff ... to remedy known traffic safety hazards.”

It is well settled that parties to an action are entitled to reasonable discovery of “any facts bearing on the controversy which will assist in preparation for trial by sharpening the issues and reducing delay and prolixity” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d at 406). In this lawsuit involving a fatal bicyclist knockdown at a busy intersection, Tri State Haulers Inc. and Frederick Stair Jr. seek production by the City of certain documents identified by, and about which an employee of the City testified at a deposition conducted in this litigation, pertaining to traffic light sequences, and block segment, roadway, and sidewalk searches. In light of the policy favoring liberal discovery, it is obvious that the documents will be reasonably useful in the defenses of Tri State Haulers Inc. and Frederick Stair Jr.

Moreover, the complaint clearly sets forth claims involving the requested documents.

Accordingly, it is

ORDERED that the motion by the City of New York, New York City Department of Transportation, and New York City Department of Environmental Protection, for a protective order is denied; and it further

ORDERED that within 20 days of service of a copy of this order with notice of entry, the City of New York, New York City Department of Transportation, and New York City

Department of Environmental Protection serve copies of the requested documents, limited to the period three years prior to the date of the accident.

Dated: 1/25/16

ENTER:

J. M.

J.S.C.

FILED
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NEW YORK
COUNTY CLERKS OFFICE