

Dayaram v City of New York
2017 NY Slip Op 32791(U)
June 20, 2017
Supreme Court, Queens County
Docket Number: 13769/14
Judge: Kevin J. Kerrigan
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Short Form Order**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**Present: Hon. Kevin J. Kerrigan
Justice**IAS PART 10**-----X
THAKOOR DAYARAM and STELLA
DAYARAM,Index No. 13769/14

Plaintiffs,

Motion Date: 3/1/17

- against -

Motion Cal. No. 55THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF SANITATION,
ALPHONSE L. LANDI, 1199 SEIU UNITED
HEALTHCARE WORKERS EAST and
GERARD J. CADET,Seq. #: 6

Defendants.

-----X
1199 SEIU UNITED HEALTHCARE WORKERS
EAST and GERARD J. CADET,

Third-Party Plaintiffs,

- against -

MERENGUE LIMO & CAR SERVICE INC. and
MERENGUE CAR SERVICE,

Third-Party Defendants.

-----X

The following papers numbered 1 to 10 read on this motion by defendants/third-party plaintiffs, 1199 SEIU United Healthcare Workers East and Gerard J. Cadet (hereinafter, "movants") for an order compelling the deposition of New York City Department of Sanitation Supervisor Michael Ingrassia by a date certain, and compelling defendants, The City of New York, New York City Department of Sanitation and Alphonse L. Landi, to provide all outstanding discovery.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1 - 5
Ans. Affs. - Exhibits	6 - 8
Reply Affs. - Exhibits	9 - 10

Upon the papers filed in support of the within motion and the papers filed in opposition thereto, the within motion is determined as follows:

Plaintiff Thakoor Dayaram allegedly sustained injuries as a result of a motor vehicle accident on South Conduit Avenue at Cohancy Street in Queens County, New York at 12:28 a.m. on December 15, 2013.

During the course of depositions of witnesses on behalf of defendant, The City of New York ("City"), it was learned that one, Michael Ingrassia, a Supervisor with defendant, New York Department of Sanitation ("NYDS"), was the "supervisor on scene," and the first NYDS employee to respond to the scene of the subject accident. In addition, from the deposition of NYDS Safety Officer Anika O'Neal, it was offered by her that she had acquired information from Supervisor Ingrassia regarding the happening of the accident, including what time he (Supervisor Ingrassia) arrived, where NYDS Supervisor Landi and plaintiff were at the time of the accident, the actions of NYDS Supervisor Landi at the time of the accident, where the involved vehicles finally came to rest, plaintiff's injuries, and who went to the hospital. Furthermore, it appears that Supervisor Ingrassia signed the NYDS "Official Accident Report," which included a diagram drawn by him, and that Supervisor Ingrassia filled out the MV-104 form of Supervisor Landi. Safety Officer O'Neal further testified that Supervisor Ingrassia was the investigative officer.

In addition to the preceding, Safety Officer O'Neal testified that NYDS Supervisors receive a "booklet of safety orders" regarding training or safety guidelines, which includes a section on safe driving and vehicle operation, a copy of which is given to all NYDS employees.

In light of the preceding, movants sought a deposition of NYDS Supervisor Michael Ingrassia and, by Supplemental Demand for Authorizations dated August 31, 2016, seek "[a] copy of the safety orders booklet/training and safety guidelines provided to Department of Sanitation Employees" (hereinafter, "the safety manual").

Movants' deposition request and discovery demand having been rebuffed, movants now seek an order compelling the requested deposition and production of the safety manual.

In opposition, the defendants, City, NYDS and Alphonse L. Landi ("Landi"), argue, *inter alia*, that movants have not established their entitlement to a deposition of NYDS Supervisor Ingrassia, and that this court's order (Ritholtz, J.), dated May 11, 2015, resolved the issue of entitlement to the safety manual.

With regard to movants' claimed need for a deposition of Supervisor Ingrassia, in order to establish that an additional deposition is necessary, "the moving party must show (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" (*see, Zollner v. City of New York*, 204 A.D.2d 626, 627 [2d Dept. 1994]; *see also, Bentze v. Chase Manhattan Bank*, 71 A.D.3d 967, 968 [2d Dept. 2010]).

A review of the transcript of Ms. O'Neal's deposition testimony demonstrates, to the court's satisfaction, that movants have established that said individual possessed less than sufficient knowledge with regard to the information that was the subject of movants' inquiry in light of her representations surrounding the involvement and role of NYDS Supervisor Ingrassia. Furthermore, in light of Ms. O'Neal's testimony, this court finds that there is a substantial likelihood that NYDS Supervisor Ingrassia does possess information which is material and necessary to the movants' defense of this action.

Beyond that, the court notes that defendants City, NYDS and Landi have offered movants the deposition of NYDS Supervisor Ingrassia, albeit in exchange for a witness, P. O. Rogers, that is allegedly retired, and who they were directed to produce by the above-cited order of May 11, 2015.¹

Furthermore, with regard to the claim that the order of May 11, 2015, resolved the question of movants' entitlement to the safety manual, this court notes, initially, that the order is silent with regard to the movants' earlier demand for the safety manual, and that the order permits the parties to make post-deposition discovery demands.

As such, movants served their post-deposition demand for, *inter alia*, the safety manual on August 31, 2016. Notably, defendants City, NYDS and Landi did not respond to same until December 2, 2016, at which time they objected to the demand for the safety manual as overbroad and irrelevant. Since the objection to the subject demand was not served within twenty (20) days of service, as required by CPLR 3122 (a), this court's review "is limited to determining whether the requested material is privileged under CPLR 3101 or the demand is palpably improper" (*see Wilner v. Allstate Ins. Co.*, 71 AD3d 155, 168 [2d. Dept. 2010], *citing Coville v. Ryder Truck Rental, Inc.*, 30 AD3d

¹See Orcutt e-mail dated September 23, 2016, and affirmation in opposition at ¶ 12.

744, 745 [3d Dept. 2006], *quoting McMahon v. Aviette Agency*, 301 AD2d 820, 821 [3d Dept. 2003])

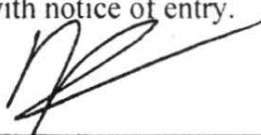
While defendants City, NYDS and Landi offer that the safety manual is voluminous, they have not made a claim that the information therein is privileged, nor does this court find the demand to be palpably improper in light of Safety Officer O'Neal's testimony.

In light of the preceding, it is

ORDERED that the within motion, insofar as same seeks to compel a deposition of NYDS Supervisor Michael Ingrassia, is granted to the extent that said individual shall be produced for a deposition within forty-five (45) days of service of the within order with notice of entry; and it is further

ORDERED that defendants City, NYDS and Landi shall comply with movants' Supplemental Demand for Authorizations dated August 31, 2016, by providing the safety manual within thirty (30) days of service of the within order with notice of entry.

Dated: June 20, 2017



Kevin J. Kerrigan, J.S.C.

