

Rodriguez v Unified Brands, Inc.

2017 NY Slip Op 32885(U)

April 11, 2017

Supreme Court, Bronx County

Docket Number: 20677/2013

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 11

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NOEMI RODRIGUEZ

Index No. 20677/2013

Plaintiff,

DECISION/ORDER

-against-

Present:
Hon. Laura G. Douglas
J.S.C.

UNIFIED BRANDS, INC., GROEN, INC., GROEN,
CULINARY DEPOT, INC., FRESH DIET EXPRESS CORP.,
YS CATERING LLP, PRO-TEK OF NY, INC.,
PRO-TEK OF NEW YORK, INC.,
PROTEK SERVICES OF NEW YORK, INC.,
PRO TEK SERVICES, PRO TECH SERVICES,
PRO TEK SERVICES KITCHEN REPAIR &
MAINTENANCE CO., and PRO TECH SERVICES
KITCHEN REPAIR & MAINTENANCE CO.,

Defendants.

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Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to vacate plaintiff's note of issue and related relief:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion by Defendant Unified Brands, Inc., Good Faith Affirmation of Neil E. Higgins, Esq. dated May 12, 2016, Affirmation of Neil E. Higgins, Esq. dated May 12, 2016 in Support of Motion, and Exhibits ("A" through "L").....	1
Affirmation of Alvin H. Broome, Esq. dated May 13, 2016 in Opposition to Motion.....	2
Affirmation of Jonathan B. Isaacson, Esq. dated June 7, 2016 in Opposition to Motion and Exhibits ("A" through "D").....	3
Plaintiff's Notice of Cross-Motion, Affirmation of Alvin H. Broome, Esq. dated May 2, 2016 in Support of Cross-Motion, and Exhibits ("1" through "4").....	4
Affirmation of Neil E. Higgins, Esq. dated July 13, 2016 in Reply and in Opposition to Cross-Motion and Exhibits ("A" through "G").....	5

Reply Affirmation of Alvin H. Broome, Esq. dated July 21, 2016..... 6

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

Defendant Unified Brands, Inc f/k/a “Groen, Inc.” and s/h/a “Groen, Inc. and Groen” (“Unified”) seeks an order vacating the plaintiff’s note of issue, extending the deadline to file a summary judgment motion, compelling the plaintiff to submit to a vocational examination and a physical examination, compelling the plaintiff to supply Arons-compliant authorizations for all health care providers permitting interviews and authorizations for the release of social media records, compelling defendants Fresh Diet Express Corp. and YS Catering LLP (collectively, “Fresh Diet”) to comply with the movant’s discovery notices and to produce employee Alexander Zabata for a deposition, compelling defendant Pro Tek to fully comply with the movant’s discovery notice, and compelling production of the executed deposition transcripts of Nicole Jackson on behalf of Fresh Diet and Diane Rossi on behalf of Pro Tek. The plaintiff cross-moves for summary judgment, for an order of preclusion against Unified for its purported failure to furnish expert disclosure, and for a protective order denying Unified a physical examination and any additional depositions. The motion and cross-motion are granted solely as ordered below and are otherwise denied.

The plaintiff seeks monetary damages for injuries allegedly sustained on June 3, 2012 at her workplace when hot liquid spilled on her from a large steam kettle manufactured, sold, installed, and/or maintained by the respective defendants.

The branch of Unified’s motion seeking a vocational examination of the plaintiff was withdrawn pursuant to stipulation, a copy of which is attached hereto. The branch of the motion seeking the execution/signature pages of the plaintiff’s deposition transcript(s) was also withdrawn. The branch of the motion seeking a further physical examination of the plaintiff was resolved by said stipulation. The branch of the plaintiff’s cross-motion addressing Unified’s expert disclosure was withdrawn pursuant to said stipulation.

The plaintiff admits that she has not provided Arons-compliant authorizations. While the plaintiff now argues against their relevancy and scope, she was already directed to furnish these authorizations by the Preliminary Conference Order dated January 24, 2014. Accordingly, the plaintiff shall furnish these authorizations for the specific physicians to be named by Unified.

With respect to the deposition transcripts, Unified may use unexecuted copies at trial pursuant to CPLR § 3116(a). Defendant Fresh Diet shall provide Unified with a copy (including any corrections) of the deposition transcript of its witness, Nicole Jackson, taken on June 24, 2015 and defendant Pro Tek shall provide Unified with a copy (including any corrections) of the deposition transcript of its witness Diane Rossi taken on January 13, 2016.

The plaintiff has not responded to Unified's demand for authorizations to obtain social media records dated September 18, 2014. However, Unified has not demonstrated a basis for obtaining such records (*see Forman v. Henkin*, 134 AD3d 529[1st Dept 2015]).

Finally, Unified contends that Fresh Diet must still respond to certain discovery demands and appear for depositions. It appears that Fresh Diet provided a response to the discovery demands during the pendency of these motions. It also appears that Unified has issued subpoenas to take the depositions of former employees of Fresh Diet, including Felton Whittaker, whose deposition had been previously court-ordered. However, Fresh Diet must produce current employee Anna Matteo for deposition. Her testimony is material, necessary and non-cumulative, particularly since she appears to have submitted an affidavit in support of Fresh Diet's summary judgment motion. However, Unified has not demonstrated that the testimony of Fresh Diet employee Alexander Zabara is material and necessary. That he may have been the plaintiff's boyfriend at the time of the accident is an insufficient basis upon which to order Fresh Diet to produce another witness for deposition.

With respect to Pro Tek, the plaintiff has not demonstrated how Pro Tek's responses are deficient. Pro Tek provided its service agreements with Fresh Diet setting forth its equipment maintenance obligations. The plaintiff has not explained the need for work tickets for service performed months after the subject accident in light of the terms set forth in the service agreements.

Given the extent of the discovery outstanding at the time, it is clear that the note of issue was filed prematurely and should be stricken. Since this restarts the period during which a summary judgment motion may be filed, there is no need to extend the present deadline. The applications for summary judgment made in conjunction with these discovery-related motions are denied at this time, with leave to resubmit before the assigned justice upon completion of the pertinent discovery.

Accordingly, it is hereby

ORDERED, that the note of issue filed by the plaintiff is hereby stricken; and it is further

ORDERED, that Unified shall notify the plaintiff in writing no later than May 9, 2017 of those physician(s) for whom it seeks Arons-compliant authorizations and the plaintiff shall furnish these authorizations within 30 days thereof; and it is further


ORDERED, that no later than 20 days following service of a copy of this Order with notice of entry Fresh Diet shall provide Unified with a copy (including any corrections) of the deposition transcript of Nicole Jackson taken on June 24, 2015; and it is further

ORDERED, that no later than 20 days following service of a copy of this Order with notice of entry Pro Tek shall provide Unified with a copy (including any corrections) of the deposition transcript of Diane Rossi taken on January 13, 2016; and it is further

ORDERED, that Fresh Diet shall produce Anna Matteo for deposition no later than 30 days following service of a copy of this Order with notice of entry

This constitutes the Decision and Order of this Court.

Bronx, New York
April 11, 2017



HON. LAURA G. DOUGLAS
J.S.C.