

**Vargas v San Francisco Assoc. L.P.**

2019 NY Slip Op 30937(U)

March 21, 2019

Supreme Court, New York County

Docket Number: 160997/2013

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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CHARLES VARGAS,

Index No. 160997/2013

Plaintiff

- against -

DECISION AND ORDER

SAN FRANCISCO ASSOCIATES LIMITED  
PARTNERSHIP, WAVECREST MANAGEMENT TEAM  
LTD., and CENTRAL DEVELOPMENT CORP.,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for personal injuries he sustained when a staircase in defendant San Francisco Associates Limited Partnership's building collapsed under him. Defendant Central Development Corp. (CDC), which performed work on the staircase, moves (1) to vacate the note of issue because CDC seeks further disclosure to support a motion for summary judgment or (2) to extend the deadline for summary judgment motions until that disclosure has been completed. C.P.L.R. § 3212(a); 22 N.Y.C.R.R. § 202.21(e).

Plaintiff filed the note of issue October 31, 2018. Therefore this motion by a proposed order to show cause filed February 6, 2019, is over two months after the deadline November 20, 2018, for such a motion. 22 N.Y.C.R.R. § 202.21(e). CDC seeks to excuse its late motion on the grounds that it retained a new attorney October 25, 2018. While its new attorney may have needed more than the 20 days permitted to determine whether CDC

had received all the disclosure CDC had requested and, if not, to move to vacate the note of issue, CDC does not explain why it needed almost five times the 20 days.

Moreover, CDC does not seek only disclosure that was previously requested and either was never produced or was missing from the file transferred from the outgoing attorney to the incoming attorney. In response to this motion, if not before, plaintiff and co-defendants have provided to CDC any such deposition transcripts and exhibits, medical records of plaintiff, inspection reports and photographs of the staircase, and expert witness disclosures insofar as these documents were requested and not produced to CDC or not transferred to its new attorney.

To CDC's credit, CDC did move to extend the deadline for summary judgment motions before that deadline expired February 28, 2019. The delayed production of documents by plaintiff or co-defendants or even the loss or misplacement of documents by CDC's former attorney may constitute grounds to extend its time to move for summary judgment, C.P.L.R. §§ 2004, 3212(a); Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 616 (1st Dep't 2017); Fraser v. 301-52 Townhouse Corp., 57 A.D.3d 416, 420 (1st Dep't 2008); Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d 338, 339-40 (1st Dep't 2007); Pena v. Women's Outreach Network, Inc., 35 A.D.3d 104, 108 (1st Dep't 2006), but does not amount to the "unusual or unanticipated circumstances" required after the note of issue to permit further disclosure of evidence not

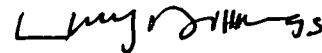
previously requested. 22 N.Y.C.R.R. § 202.21(d). See Arons v. Jutkowitz, 9 N.Y.3d 393, 411 (2007); Cuevas v. 1738 Assoc., L.L.C., 111 A.D.3d 416, 416-17 (1st Dep't 2013); Bermel v. Dagostino, 50 A.D.3d 303, 304 (1st Dep't 2008). CDC's need now to conduct further disclosure is occasioned only by its current attorney's perception that the former attorney did not seek all the disclosure that may be useful and not by any recent, unexpected disclosure by another party or other development attributable to another party. See Madison v. Sama, 92 A.D.3d 607, 607 (1st Dep't 2012); Schroeder v. IESI NY Corp., 24 A.D.3d 180, 181 (1st Dep't 2012). See Stowlowski v. 234 E. 178th St. LLC, 104 A.D.3d 569, 570 (1st Dep't 2013); Parato v. Yagudaeu, 46 A.D.3d 332, 332-33 (1st Dep't 2007); Colon v. Yen Ru Jin, 45 A.D.3d 359, 359-60 (1st Dep't 2007); Pannone v. Silberstein, 40 A.D.3d 327, 328 (1st Dep't 2007).

CDC urges that part of the further disclosure CDC now seeks is due to co-defendant San Francisco Associates' opposition to plaintiff's prior motion for summary judgment, in which San Francisco Associates claimed CDC's work weakened the staircase. San Francisco Associates not only served its opposition well before plaintiff filed the note of issue, but also claimed CDC's contribution to plaintiff's injury in San Francisco Associates' answer to the amended complaint. Based on this previously interposed claim, CDC's former attorney in fact explored this issue extensively at the deposition of San Francisco Associates' witness. Therefore this claim constitutes neither unusual nor

unanticipated circumstances that developed after the note of issue.

For these reasons, the court denies CDC's motion to vacate the note of issue or to compel disclosure. C.P.L.R. § 3124; 22 N.Y.C.R.R. § 202.21(d) and (e). Since only in opposition to this motion did CDC receive all the documents to which it previously was entitled and which may bear on its liability and thus any motion for summary judgment by CDC, however, the court grants CDC's motion insofar as it seeks to extend the deadline to file and serve summary judgment motions, but only until April 22, 2019. C.P.L.R. §§ 2004, 3212(a).

DATED: March 21, 2019



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.