

**Ramirez v 40 W. 22nd St. Tenants Coop. Corp.**

2019 NY Slip Op 31646(U)

June 6, 2019

Supreme Court, New York County

Docket Number: 154217/2014

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

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

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JUAN RAMIREZ,

Index No. 154217/2014

Plaintiff

- against -

40 WEST 22ND ST. TENANTS COOP. CORP.,  
KYROUS REALTY GROUP INC., ELEVATION  
ELEVATOR GROUP INC., HIGH LINE  
CONSTRUCTION GROUP LLC, and DAVID MONN,

Defendants

-----X  
-----X

40 WEST 22ND ST. TENANTS COOPERATIVE  
CORP. i/s/h/a 40 WEST 22ND ST. TENANTS  
COOP. CORP. and KYROUS REALTY GROUP  
INC.,

Index No. 595228/2015

Third Party Plaintiffs

- against -

HIGH LINE CONSTRUCTION GROUP LLC and  
DAVID MONN,

Third Party Defendants

-----X  
-----X

HIGH LINE CONSTRUCTION GROUP LLC,

Index No. 595541/2015

Second Third Party Plaintiff

- against -

SAVAL CONSTRUCTION GROUP INC.,

Second Third Party Defendant

-----X

-----X

DAVID MONN,

Index No. 595541/2015

Third Third Party Plaintiff

- against -

SAVAL CONSTRUCTION GROUP INC.,

Third Third Party Defendant

-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Defendants 40 W. 22nd St. Tenants Cooperative Corp. and Kyrour Realty Group Inc. move to vacate the note of issue served by plaintiff on April 9, 2019, and to compel plaintiff to appear for a further deposition and physical examinations. C.P.L.R. § 3124; 22 N.Y.C.R.R. § 202.21(e). On March 13, 2019, approximately four weeks before serving the note of issue, plaintiff served a fourth supplemental bill of particulars alleging for the first time, but consistent with his recent expert's report and disclosure, a need for future medications, x-rays, magnetic resonance imaging, physical therapy, and surgical procedures indefinitely. The moving defendants claim they lacked sufficient time to seek disclosure regarding these new claims before plaintiff filed the note of issue and therefore now, after the note of issue, seek to question him about his new claims and to conduct physical examinations to determine his need for the claimed future treatment.

While the moving defendants fail to explain why they lacked

sufficient time to serve notices of a deposition and of physical examinations between March 13 and April 9, 2019, plaintiff nevertheless consents to a limited further deposition and a further physical examination. The inquiry that the moving defendants seek was unanticipated until a few weeks before the note of issue, is limited to the scope of the recent supplemental bill of particulars, and may be accomplished without vacating the note of issue in this action that has been pending for over five years. See 22 N.Y.C.R.R. § 202.21(d); 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).

Although the moving defendants seek more than one further physical examination, and C.P.L.R. § 3121(a) permits more than one, defendants already have conducted multiple physical examinations of plaintiff when they had every opportunity to assess his need for different types of future treatment. Even if they are excused from that assessment previously because he did not claim the need for future treatment previously, they nowhere indicate why multiple specialists are required to assess the common types of treatment he now claims he will need. Therefore the court grants the motion by 40 W. 22nd St. Tenants Cooperative and Kyrous Realty to the extent of compelling disclosure as follows. C.P.L.R. § 3124.

Upon these defendants' service of a notice consistent with C.P.L.R. § 3107, plaintiff shall appear for a further deposition

by July 8, 2019. The collective inquiry by all defendants shall be limited to two hours, including answers, but excluding colloquy, as the scope of the inquiry also shall be limited to plaintiff's new claims in his fourth supplemental bill of particulars, and his knowledge about his need for future treatment likely is based on information from his physicians, not on personal knowledge. See Hutton v. Aesthetic Surgery, P.C., 161 A.D.3d 595, 596 (1st Dep't 2018); Nathel v. Nathel, 55 A.D.3d 434, 434 (1st Dep't 2008); Matter of Dier, 13 A.D.3d 150, 151 (1st Dep't 2004); Bielat v. Montrose, 249 A.D.2d 103, 103 (1st Dep't 1998). Only if examination by plaintiff's attorney exceeds the scope of defendants' examination about the types of future treatment, may defendants inquire beyond that original scope and beyond the two hours, but not beyond the scope of the examination by plaintiff's attorney. Upon the moving defendants' service of a notice consistent with C.P.L.R. § 3121(a), plaintiff shall appear by August 7, 2019, for a further physical examination by a physician whom these defendants designate.

Defendants shall conduct the deposition and physical examination by the dates specified above or waive entitlement to that disclosure, unless plaintiff unreasonably has refused to appear at the time and place designated. The court denies the motion by 40 W. 22nd St. Tenants Cooperative and Kyrous Realty insofar as they seek further disclosure and to vacate the note of

issue. C.P.L.R. § 3124; 22 N.Y.C.R.R. § 202.21(d) and (e); Ortiz v. Arias, 285 A.D.2d 390, 390-91 (1st Dep't 2001).

DATED: June 6, 2019

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.