

P.P. v Hillside Park 168 LLC
2019 NY Slip Op 32902(U)
August 14, 2019
Supreme Court, Queens County
Docket Number: 711521/16
Judge: Robert I. Caloras
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. ROBERT I. CALORAS

PART 36

Justice

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P.P., M.P. and D.P., infants under the age of 14 years
By their Mother and Natural Guardian, NURUN
NAHAR, and NURUN NAHAR, Individually,

Index No. 711521/16
Motion Date: 6/27/19
Motion Cal. No. 27, 28
Seq. No. 2, 3

Plaintiff,

-against-

HILLSIDE PARK 168 LLC and
ZARA REALTY HOLDING CORP.
CHRISTINA CANDACE WYNN,

Defendants

-----X
HILLSIDE PARK 168 LLC and
ZARA REALTY HOLDING CORP.,

Third-Party Plaintiffs,

-against-

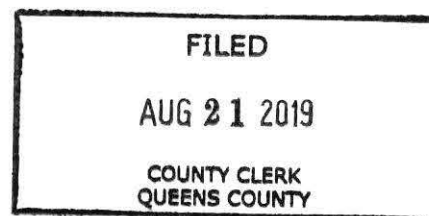
PRESTIGE PEST CONTROL,

Third-Party Defendant.

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The following papers numbered E34-E50, E52-E58 read on this motion by plaintiff for an order pursuant to the CPLR compelling defendants to produce Court-ordered discovery; and upon defendants motion pursuant to CPLR 3042 and 3126 precluding the plaintiffs from offering any testimony or evidence at trial regarding medical treatment for the failure to properly provide unrestricted authorizations pursuant to the April 4, 2019 Order and dismissing the complaint.

Notice of Motion-Affirmation-Exhibits.....
Affirmation in Opposition-Exhibits.....
Notice of Motion-Affirmation-Exhibits.....

PAPERS
NUMBERED
E34-E37
E53-E55
E38-E49



Affirmation in Opposition.....	E50
Affirmation in Opposition.....	E52
Reply Affirmation-Exhibit.....	E56-E58

Upon the foregoing papers, it is ordered that plaintiffs' motion and defendants' motion are determined as follows:

In the Complaint, the plaintiffs allege that the defendants did not properly provide extermination services to its building located at 88-15 168th Street, Apt. 7R, Jamaica, New York 11432, during a bedbug infestation throughout the building. As a result, plaintiffs allege that they sustained injuries.

Plaintiffs now move for an order compelling the defendants to respond to their Combined Demands. In the Combined Demands, plaintiffs requested the following documents:

- i. Any and all Housing Preservation and Development violations for years of incident and three (3) years prior received by defendants regarding vermin, including mice, cockroaches and bedbugs.
- ii. Any and all 311 complaints regarding vermin including bedbugs, mice, cockroaches received by defendants for years of incident and three (3) years prior.
- iii. Identify all other apartments that were infested and identify occupants that made complaints regarding vermin including bedbugs, cockroaches and mice for years of incident and three (3) years prior.
- iv. All written reports, records invoices of exterminator records for the subject building regarding all apartments for the years of incident and 3 years prior. Such records should include extermination of all vermin, including bed bugs, mice and cockroaches.
- v. Any and all correspondence between defendants and such exterminator.
- vi. All work orders, service tickets and maintenance records of plaintiffs' apartment for three years prior to accident/incident.
- vii. All maintenance records, inspection records, service orders and work tickets regarding bedbug condition for all apartments three years prior to accident/incident

On March 5, 2018, defendants responded to plaintiff's Combined Demands, and exchanged the extermination records for plaintiffs' apartment. However, plaintiffs claim that defendants failed to produce extermination records for the building, HPD Violations, DOB

Violations, 311 Complaints, evidence of other infestations, work orders, maintenance records related to bed bug conditions for all apartments in the building. Plaintiffs argue that the HPD violations, DOB violations and 311 complaints are relevant as to what notice the defendant owner and defendant management company had with respect to an infestation throughout the building prior to plaintiffs' injuries. As to defendants' other objections to plaintiffs' demands, plaintiffs have submitted an affidavit from Jeffrey Eisenberg, a licensed exterminator in New York and New Jersey, and several articles.

In opposition, defendants argue that they properly objected to plaintiffs' demands for 311 complaints, HPD violations, DOB Violations, extermination records, and records for all apartments as to bedbugs, cockroaches and mice for 3 years prior as to every apartment, is unduly burdensome and overbroad. Defendants assert that there are approximately 192 apartments in this building, and that plaintiffs have made no showing, with admissible, evidence that they would be entitled to breach the privacy of 191 other tenants. Defendants argue that the privacy of the other tenants outweighs the need for discovery. Defendants further argue that the demand is overbroad, as it requests items related not only to bed bugs, but vermin, cockroaches and mice. There is no claim for bites relating to any of these other things. Therefore, defendants argue that these items are clearly not within the scope of discovery. Defendants further argue that the Court should not consider Mr. Eisenberg's affidavit because it was not signed, and that the other documents plaintiffs attached thereto should also not be considered because they are not in a proper form.

Pursuant to CPLR 3101(a), "[t]here shall be full disclosure of all matter material and necessary in the prosecution ... of an action." The words "material and necessary" are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial (M.C. v City of New York, 173 A.D.3d 728 [2d Dept. 2019]). "The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed" (M.C. v City of New York, supra).

Here, the Court finds that the plaintiffs' have failed to demonstrate that defendants are obligated to disclose documents for HPD violations, DOB violations, and 311 complaints. In as much as these documents are obtainable as public records, the defendants are not required to provide same to the plaintiffs (see e.g., Villa v New York City Housing Authority, 107 AD2d 619, 621 [1st Dept 1985]). Accordingly, plaintiffs' demands for these records are stricken, and the branch of the motion seeking these records is denied.

As to the remaining demands, the Court finds that Mr. Eisenberg's affidavit is

inadmissible, because he did not sign it. Therefore, the attachments annexed to Mr. Eisenberg's affidavit are also inadmissible. With respect to the remaining demands for documents pertaining to the other apartments in plaintiffs' building, plaintiffs' argue that these documents are relevant in determining whether defendants acted correctly in preventing the spread of the infestation prior to, and throughout, the infestation in plaintiffs' apartment. The Court also notes that in the Compliance Conference Order, dated November 15, 2018, the third party defendant was directed to provide extermination records for the building for six months prior to the date of loss. Under these circumstances, the Court finds that extermination records for the apartments in plaintiffs' building in the "R" line for six months prior to the date of the alleged incident is discoverable. The Court further finds that the defendants have not set forth a basis to limit discovery to bed bugs. However, the Court does agree with the defendants concern regarding the tenants' privacy. Therefore, the defendants shall provide plaintiffs in 45 days, redacted records only showing the apartment number, maintenance records, inspection records, service orders and work tickets regarding for six months prior to the date of the alleged incident.

In defendants motion, they are requesting that the Court issue an order pursuant to CPLR 3042 and 3126, precluding the plaintiffs from offering any testimony or evidence at trial regarding medical treatment for the failure to properly provide unrestricted authorizations pursuant to the April 4, 2019 Order, and dismissing the complaint. On April 4, 2019, this Court "So Ordered" a stipulation wherein plaintiffs were directed to provide unrestricted authorizations for the following: as to plaintiff Nurun - Dr. Hossian, Medicaid, Employment authorizations for 2 years prior to date, and for the three infant plaintiffs - DR. Singh, pediatrician records, Medicaid/Collateral Source, and school records for two years prior to date. The Stipulation further directed that failure to provide these authorizations in thirty days will result in plaintiffs being precluded from providing testimony or evidence regarding lost wages and medical treatment. Defendants claim that the authorizations plaintiffs provided were not in compliance with the Stipulation, because they were date restricted and did not include all the authorizations plaintiffs were directed to provide. Therefore, defendants argue that plaintiffs' have willfully failed to comply with the terms of the Stipulation. As such, defendants argue that plaintiffs should be precluded from offering testimony regarding their medical treatment or injuries, and the Complaint should be dismissed pursuant to CPLR 3126.

Third party defendant joins in with defendants request, claiming that plaintiffs have not provided them with the discovery directed in the Stipulation.

In opposition, plaintiffs claim that annexed to their affirmation in opposition are the

following : for plaintiff Nurun Nahar: unrestricted authorization for Dr. Hossain, Medicaid, and primary care doctor; and for the three infant plaintiffs: unrestricted authorizations with regard to Dr. Singh, pediatrician records, Medicaid or collateral source, and school records for two years prior to date. Plaintiff asserts employment records for Nurun Nahar are not applicable because she has withdrawn her claim for lost wages. Therefore, plaintiffs argue that they have complied with the Stipulation, and that the motion should be denied.

In reply, defendants assert that the authorizations that plaintiffs claim to have annexed to their affirmation in opposition do not contain any exhibits with said authorizations.

Upon review of the E-filed documents plaintiffs filed in response to defendants motion, it appears that the exhibits containing the authorizations directed in the Stipulation were not E-filed. Based upon plaintiffs statements in the affirmation in support, the Court finds that the plaintiffs have made substantial efforts to comply with the Stipulation, and that the failure to upload the authorizations were an oversight. Therefore, the Court will provide the plaintiffs with one final opportunity to comply with the Stipulation. As such, plaintiffs are directed to provide the authorizations to defendants and third party defendant within 30 days, or the Complaint shall be dismissed pursuant to CPLR 3126. This condition order shall be self executing, without further order of the Court.

Based upon the foregoing, plaintiffs' motion is granted in part and denied in part, and defendants' motion is granted.

Dated: August 14, 2019



ROBERT I. CALORAS, J.S.C.