

Colon v Site A - Washington Heights TP4 Hous. Dev. Fund Co., Inc.
2019 NY Slip Op 33062(U)
October 3, 2019
Supreme Court, New York County
Docket Number: 159922/2015
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
-----X

JOSE COLON,

Index No. 159922/2015

Plaintiff

- against -

SITE A - WASHINGTON HEIGHTS TP4 HOUSING
DEVELOPMENT FUND COMPANY, INC., and
MANHATTAN NORTH MANAGEMENT INC.,

Defendants
-----X
-----X

SITE A - WASHINGTON HEIGHTS TP4 HOUSING
DEVELOPMENT FUND COMPANY, INC., and
MANHATTAN NORTH MANAGEMENT INC.,

Third Party Plaintiffs

- against -

AIDS SERVICE CENTER OF LOWER MANHATTAN,
INC. d/b/a AIDS SERVICE CENTER,

Third Party Defendant
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DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Third party defendant moves for penalties due to third party plaintiffs' nondisclosure of their employees who were at their site March 19, 2015, when plaintiff slipped and fell on snow and ice at that site. Although ordered to attest what efforts third party plaintiffs undertook to identify those employees, third

party plaintiffs have attested only that they retain no records of their employees' locations on that date. Third party plaintiffs, the site owner and its manager for the site, claim that third party defendant, the tenant at the site, was responsible for snow removal in the driveway where plaintiff fell. Yet the affidavit by the Human Resources Manager of third party plaintiff Manhattan North Management, Inc., claims the inability to identify which employees were at the site March 19, 2015, and thus anyone with personal knowledge of such a fact.

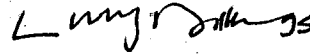
The Human Resources Manager does not describe where she searched for records of employees' assignments or locations; the extent of her search; how she knows no such records were retained, particularly since her employment began almost a year after March 19, 2015; or whether she inquired of the employees working that day whether they were at the site in question. Third party plaintiffs may not rely exclusively on the lease, because it imposes responsibility on the tenant to maintain only the sidewalk flags immediately adjacent to its doorway and not the other public exterior portions of the premises and specifically imposes responsibility on the landlord to clear snow and ice from the parking area exterior to the leased premises. Moreover, plaintiff testified at his deposition that he observed third party plaintiffs' employees shoveling snow in the driveway where he fell on March 19, 2015, before he fell.

Third party plaintiffs, having been given multiple opportunities to identify an employee at the site of plaintiff's fall on the day plaintiff fell, having failed to do, and having failed to explain satisfactorily either their efforts to identify such an employee or why they could not inquire of their employees, Vazquez v. Lambert Houses Redevelopment Co., 110 A.D.3d 450, 451-52 (1st Dep't 2013); Henderson-Jones v. City of New York, 87 A.D.3d 498, 505 (1st Dep't 2011), third party plaintiffs may not now present such a witness. Therefore, as set forth on the record October 3, 2019, the court grants third party defendant's motion to the extent that, if by October 23, 2019, third party plaintiffs do not identify an employee at the site of plaintiff's fall March 19, 2015, they shall be precluded from presenting any such witness in support of or in opposition to summary judgment or at trial. C.P.L.R. § 3126(2); Gibbs v. St. Barnabas Hosp., 16 N.Y.3d 74, 82-83 (2010); Northway Eng'g v. Felix Indus., 77 N.Y.2d 332, 335 (1991); Garcia v. Defex, 59 A.D.3d 183, 183-84 (1st Dep't 2009); Rosa v. New York City Tr. Auth., 55 A.D.3d 344, 345 (1st Dep't 2008).

The court denies any further relief sought by third party defendant's motion. C.P.L.R. § 3126(3). The parties shall

appear for a final Status Conference October 24, 2019, after which plaintiff shall file a note of issue by October 31, 2019.

DATED: October 3, 2019



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.