

Johnson v Koch
2020 NY Slip Op 32212(U)
July 1, 2020
Supreme Court, New York County
Docket Number: 155040/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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CURTIS JOHNSON,	INDEX NO. <u>155040/2018</u>
Plaintiff,	MOTION DATE <u>07/02/2020</u>
- v -	MOTION SEQ. NO. <u>003</u>
ERIC S. KOCH, NORMAN L. KOCH and NICOLE S. ROBINSON,	
Defendants.	

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for QUASH.

Upon the foregoing documents, it is ORDERED that plaintiff's motion for an Order pursuant to CPLR 2304 to quash defendants' subpoena for the deposition of non-party witness William Melendez is granted. Defendants' cross-motion for an Order pursuant to 2302(b) issuing a so-ordered subpoena for the deposition of Mr. Melendez is denied.

This action stems from a motor vehicle accident, which occurred on September 7, 2016, when a vehicle owned by defendant Norman L. Koch and operated by defendant Eric S. Koch rear-ended a vehicle owned by defendant Nicole S. Robinson in which plaintiff was a passenger. As a result of the accident plaintiff claims to have suffered serious injuries to his neck and back, necessitating two surgeries of the cervical spine and one surgery of the lumbar spine. On November 22, 2019, defendants served a Subpoena ad Testificandum on William Melendez, who is plaintiff's supervisor at the Air Pegasus Heliport where plaintiff is employed as a "[r]amp agent, air traffic controller" (Mot 002, Exh D at 23, ¶17).

Plaintiff's motion contends that the subpoena seeks irrelevant information, as plaintiff was not acting within the scope of his employment when the accident occurred. Further, plaintiff also argues that the subpoena fails to specify with reasonable particularity the nature of the information sought from Mr. Melendez. "CPLR 3101(a) establishes the broad scope of disclosure in CPLR Article 31 and mandates full disclosure of all matter material and necessary in the prosecution or defense of an action" (*Velez v. Hunts Point Multi-Serv. Ctr., Inc.*, 29 A.D.3d 104, 111 [1st Dept 2006]). CPLR 3101(a)(4) allows for "discovery of any person who possesses material and necessary evidence" (*Matter of Kapon v Koch*, 23 NY3d 32, 36 [2014]). "However, this broadly stated standard, while consistent with a policy favoring the production of information, should not serve as an excuse for a court to abdicate its responsibility to determine whether the materials sought are in fact relevant to a legitimate subject of inquiry or to permit the subpoena power to be used as a tool of harassment or for the proverbial 'fishing expedition' to ascertain the existence of evidence" (*Reuters Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 342 [1st Dept 1997]).

Here, plaintiffs have demonstrated that the discovery sought by defendants is not "material and necessary" (*id.*). Defendants issued an Amended Subpoena on January 2, 2020, which concedes that defendants were seeking information from Mr. Melendez relating to plaintiff's claim of damages (Cross Mot, Exh C). However, it is undisputed that Mr. Melendez was not present at the scene of the incident and that plaintiff was not in the course of his employment at the time of the incident. The Court finds defendants' argument that the deposition of Mr. Melendez is "material and necessary" to pursue all relevant evidence related to damages to be unavailing. Defendant alleges that the information sought will shed light on "plaintiff's job

responsibilities and his ability to perform them in the wake of the accident” (Cross Mot at 5, ¶ 14). However, plaintiff has already provided the information sought.

Plaintiff testified that he works as an air traffic controller and ramp agent who offloads passengers on and off of helicopters and sits in a chair and tells helicopters where to land. (Mot 002, Exh D at 23, ¶ 1-8; 24, ¶ 7-9; 31, ¶ 9-12). Plaintiff testified that he did not inform his supervisor of his back pain and continued to work up until his surgery (*id.* at 28, ¶ 1-16). Thus, plaintiff has adequately testified as to his responsibilities and ability to perform them after the underlying accident. The deposition of Mr. Melendez is not material and necessary in determining the damages in this case.

Defendants have wholly failed to establish that Mr. Melendez is a doctor or expert witness who can speak to the correlation between the accident and plaintiff’s ability to perform his work duties. Defendants have further failed to show how the testimony of a layperson would provide information, which has not already been provided, that is material and necessary to the issue of plaintiff’s damages. Thus, plaintiff’s motion to quash defendants’ subpoena of Mr. Melendez is granted and defendants’ cross-motion to issue a so-ordered subpoena for the deposition of Mr. Melendez is denied.

Accordingly, it is

ORDERED that plaintiff’s motion for an Order pursuant to CPLR 2304 to quash defendants’ subpoena for the deposition of non-party witness William Melendez is granted; and it is further

ORDERED that defendants’ cross-motion for an Order pursuant to 2302(b) issuing a so-ordered subpoena for the deposition of Mr. Melendez is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.



7/01/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

X

GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE