

Vasquez v 39 Cam LLC
2020 NY Slip Op 32623(U)
August 12, 2020
Supreme Court, New York County
Docket Number: 158487/2016
Judge: Robert R. Reed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

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INDEX NO. 158487/2016

DOMINGO VASQUEZ, JOSEFINA FERNANDEZ,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 004

- v -

39 CAM LLC, CAMMEBYS REALTY CORP., CAMMEBYS
MANAGEMENT COMPANY, LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143

were read on this motion to STRIKE PLEADINGS.

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

In this personal injury action, plaintiff Domingo Vasquez (Vasquez) alleges that he sustained serious injuries on March 13, 2014 when he fell while walking down a ramp located on defendants' premises at 39 Broadway, New York, NY 10006. Vasquez alleges that the subject ramp had a steep incline and severely deteriorated grip strips, and that it lacked a handrail. Vasquez contends the ramp was negligently constructed and maintained.

On December 12, 2019, defendants produced George Kercu (Kercu) for an examination before trial. Kercu testified that for the last 10 years he has worked as an account supervisor for First Rate Maintenance -- a company hired by one of the defendants to clean the subject premises. Kercu testified that he was not familiar with defendants Cammeby's Realty Corp. and 39 Cam LLC, and that he had no knowledge of how the various defendants are related to one another (*see* NYSCEF Doc. No. 126, EBT of G. Kercu at page 11, lines 3-9, page 13, lines 4-11,

page 19, lines 3-25 and page 20, line 1-18). Kercu testified that when there is an issue with the subject premises unrelated to cleaning, the tenants and/or other vendors on site notifies defendant Cammeby's Management Company LLC (Cammeby's) through "tenant services" -- an entity created by defendants -- which then dispatches building engineers that work for Cammeby's to address the issue (*see* NYSCEF Doc. No. 126, EBT of G. Kercu, page 23, lines 9-25, pages 24-25). Kercu also testified that he had no knowledge of when the subject ramp was installed and if there was a maintenance issue unrelated to cleaning at the time of plaintiff's alleged accident (*see* EBT of George Kercu at page 30, lines 17-22, page 38, lines 12-25, and page 39, lines 7-25).

On or about December 18, 2019, plaintiffs served post-EBT demands that defendants produce two witnesses for an EBT: the first witness, a building engineer or assistant engineer who is employed by one of the named defendants; the second witness, an individual with sufficient knowledge to discuss any service and/or contractual agreements between the defendants and First Rate Maintenance, and who can explain how the defendants are related and what their respective roles are in regards to the subject premises. Defendants responded to plaintiffs' post-EBT demands by stating that the EBT of Mr. Kercu was sufficient and that defendants would not be producing another witness without a court order requiring them to do so.

Plaintiffs now move for an order, pursuant to CPLR 3126, to strike defendants' answer, resolve the issues of liability in favor of plaintiffs, or to compel defendants to produce a witness with knowledge and authority to speak on behalf of defendants, or to render a default judgment in favor of plaintiffs. Plaintiffs allege that defendants have acted willfully and contumaciously in failing to produce a knowledgeable witness for an examination before trial and defendants have

done so without adequate reason. Defendants oppose, arguing that the witness provided was knowledgeable about its defenses to the claim of negligence in caring for the ramp. Defendants also argue that plaintiffs are not entitled to insist upon the deposition of a building engineer familiar with the subject or of a witness with knowledge about “service and/or contractual agreements.”

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403, 406). A party seeking to establish that additional depositions are necessary must demonstrate that the representative already deposed provided inadequate information or had insufficient knowledge, and that there is a substantial likelihood that the person or persons sought for depositions possess information that is material and necessary to the prosecution of the case (*Those Certain Underwriters at Lloyds, London v. Occidental Gems, Inc.*, 41 AD3d 362, 365).

Plaintiffs have met their burden in showing that the individual produced by defendants for a deposition lacked sufficient knowledge. At Kercu’s deposition, plaintiffs sought information regarding the installation and maintenance -- maintenance beyond the scope of cleaning -- of the subject ramp. Plaintiffs sought information regarding the individuals who were tasked with remedying maintenance issues. Plaintiffs also sought information regarding contracts between Cammeby’s and First Rate Maintenance for cleaning services. It appears from Kercu’s testimony that he is only responsible for cleaning the subject premises and has no knowledge of any contracts between Cammeby’s and First Rate Maintenance. Kercu testified that he is

responsible for cleaning tasks at the subject premises and confirmed that maintenance outside the scope of cleaning is handled by other individuals through tenant services -- a company created by Cammeby's. Thus, maintenance relating to deteriorated grip strips and handrails for a ramp would appear to lie outside the scope of Kercu's responsibilities at the subject premises. Additionally, at his deposition, when asked by plaintiffs' counsel "Are you aware of any contracts between Cammeby's Management and First Rate Maintenance?," Kercu testified "No, I do not" (*see* NYSCEF Doc. No. 126, page 20, lines 12-15).

Kercu's testimony makes clear that a building engineer is called for maintenance outside of cleaning and that Kercu has no knowledge of when the subject ramp was installed or if it required maintenance at or around the time of the alleged accident. Plaintiffs have demonstrated that the witness produced by defendants had insufficient knowledge to answer relevant questions put to him during the deposition and that there is a substantial likelihood that the individuals sought for deposition -- a building engineer and an individual who can speak to the contractual relationships involving the defendants -- possess information that is material and necessary to the prosecution of this action. Defendants' argument that plaintiffs are not entitled to seek the deposition of such individuals is unavailing.

Accordingly, it is

ORDERED that the portion of plaintiffs' motion to compel defendants 39 Cam LLC, Cammeby's Realty Corp., and Cammeby's Management Company LLC to provide additional EBT witness testimony is granted; and it is further

ORDERED that, within 45 days of the entry of this order, defendants 39 Cam LLC, Cammeby's Realty Corp., and Cammeby's Management Company LLC shall produce a building engineer or assistant building engineer with sufficient knowledge and authority to speak

on behalf of defendants as it relates to installation and maintenance of the subject ramp for an examination before trial at a mutually agreeable date and time and at a mutually agreeable location (adhering to all COVID-19 guidelines); and it is further

ORDERED that, within 45 days of entry of this order, defendants 39 Cam LLC, Cammeby's Realty Corp., and Cammeby's Management Company LLC shall produce an officer or employee with sufficient knowledge and authority to speak on behalf of defendants as it relates to defendants' relationships to one another and to the nature of their contractual relationship, if any, with First Rate Maintenance for an examination before trial at a mutually agreeable date and time and at a mutually agreeable location (adhering to all COVID-19 guidelines); and it is further

ORDERED that plaintiffs' motion is in all other respects denied; and it is further

This constitutes the Decision and Order of the court.

8/12/2020

DATE



ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE