

Alberico v LDG Bldrs. LLC
2021 NY Slip Op 31534(U)
May 6, 2021
Supreme Court, New York County
Docket Number: 154621/2016
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS PART 11

Justice

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AMANDA ALBERICO,

Plaintiff,

- v -

LDG BUILDERS LLC, ATC CONSTRUCTION GROUP,
RIVERSIDE UNIT C, LLC., AE DESIGN INC. D/B/A
ANDRES ESCOBAR & ASSOCIATES, NEST SEEKERS
INTERNATIONAL LLC, LEV ASSET MANAGEMENT, LLC,
A.T.C. CONSTRUCTION GROUP CORP., ANTHONY
THOMAS CHAU CONSTRUCTION GROUP CORP,
MARCHITECTS INC. and JOHN DOE,

Defendants.

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INDEX NO. 154621/2016

MOTION DATE 08/19/2020,
09/15/2020

MOTION SEQ. NO. 008, 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 264, 266, 267, 269

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents and oral argument held on May 6, 2021, the court grants in part Plaintiff Amanda Alberico’s (“Plaintiff”) motion to compel additional discovery prior to the deposition of Eddie Shapiro, filed under motion sequence 008, to the extent that the court sets the following discovery schedule and the court denies Defendant AE Design, Inc. d/b/a Andres Escobar & Associates’ (“AE Design”) motion for summary judgment and dismissal of Plaintiff’s complaint and all cross-claims against AE Design, filed under motion sequence 009.

Plaintiff filed this personal injury action against Defendants LDG Builders LLC (“LDG”), ATC Construction Group, A.T.C. Construction Group Corp., Anthony Thomas Chau Construction Group Corp., Anthony Thomas Chau Construction Group Corp (collectively “ATC

Defendants”), Marchitects, Inc., Riverside Unit C, LLC, AE Design, Nest Seekers International LLC (“Nest Seekers”), Lev Asset Management, LLC, , and John Doe (collectively “Defendants”). Plaintiff seeks damages for alleged injuries she sustained on November 19, 2015, while working for Defendant Nest Seekers when a wooden plank fell from the wall and landed on her. The office was constructed in 2011. Defendant LDG is no longer in the case and Defendant Lev Asset Management, LLC failed to appear in this action.

Plaintiff now moves to compel Defendants to provide outstanding discovery prior to the commencement of the deposition of Nest Seeker’s principle, Eddie Shapiro, pursuant to CPLR 3124, under motion sequence 008. Defendants Nest Seekers, Riverside Unit C, AE Design and the ATC Defendants all oppose the motion. Defendant AE Design has since responded to Plaintiff’s outstanding discovery demand.

The court grants in part Plaintiff’s motion to the extent that the court compels Defendants to comply with the following discovery schedule set forth below.

Defendant AE Design moves for summary judgment in its favor and for dismissal of Plaintiff’s complaint, under motion sequence number 009. Defendant AE Design argues in substance that it is entitled to summary judgment because it owed no duty to Plaintiff, it breached no duty to Plaintiff, it did not install the wood planking that allegedly caused Plaintiff’s injuries, it was not present on the site when the wood planking was installed, nor did it have anything to do with the wood planking. Additionally, AE Design argues that it provided the design concept and visuals for the construction project, suggested the use of tile instead of fabric, and recommended that blocking should be used to fasten the planking to the wall in a proper manner. However, it had nothing to do with the installation of the wood planking and based on a

photograph, it appeared that no blocking had been used, but that the wood planking had been glued to the wall.

Plaintiff and the ATC Defendants oppose the motion and argue in substance that the motion is premature as outstanding discovery remains.

The court agrees with Plaintiff and the ATC Defendants and finds that Defendant AE Design's motion for summary judgment is premature as there is outstanding discovery. The court finds that disputed material issues of fact may be disclosed through the depositions of Nest Seeker's principle, Eddie Shapiro, and its former employee, Yoram Burrell, who allegedly acted as its construction manager. As such, the court denies AE Design's motion for summary judgment without prejudice and with leave to renew once discovery is complete.

The court considered and denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Plaintiff Amanda Alberico's ("Plaintiff") motion to compel additional discovery prior to the deposition of Eddie Shapiro, filed under motion sequence 008, to the extent that the court sets the following discovery schedule:

1) The court directs Defendants ATC Construction Group, A.T.C. Construction Group Corp., Anthony Thomas Chau Construction Group Corp. and Anthony Thomas Chau Construction Group Corp. to serve Dr. Barr's IME report of his examination of Plaintiff on the parties within forty-five (45) days of the date of this Order;

2) The court directs Defendants ATC Construction Group, A.T.C. Construction Group Corp., Anthony Thomas Chau Construction Group Corp. and Anthony Thomas Chau Construction Group Corp. to conduct a thorough and exhaustive search of Jonathan Chau's and

the records of any employee, or representative who worked on this project and provide Plaintiff with copies of all electronic communications, including emails and text messages, with Yoram Burrell, Eddie Shapiro, Ravi Gulavindala, Andres Escobar, Nexida Mejia, and March Chadwick regarding the design, installation, or construction regarding the wooden plank which allegedly caused Plaintiff's injuries, from the date of these Defendants' initial involvement in the work conducted at the site until the date of Plaintiff's alleged injury within thirty (30) days of the date of this Order; and it is further

ORDERED that the court directs Defendants Riverside Unit C, LLC and Nest Seekers International LLC to produce Eddie Shapiro for a deposition to be held on a date and time agreed upon by the parties, but no later than sixty (60) days of the date of this Order; and it is further

ORDERED that the court directs the parties to depose Yoram Burrell at a mutually agreed upon date and time, but no later than sixty (60) days of the date of this Order, or such deposition will be waived; and it is further

ORDERED that the end date for all disclosure is September 23, 2121; and it is further

ORDERED that Plaintiff must file a Note of Issue on or before September 28, 2021; and it is further

ORDERED that all dispositive motions must be filed within sixty (60) days of the filing of the Note of Issue; and it is further

ORDERED that the court denies Defendant AE Design, Inc. d/b/a Andres Escobar & Associates' ("AE Design") motion for summary judgment and dismissal of Plaintiff's complaint and all cross-claims against AE Design, filed under motion sequence 009; without prejudice and with leave to renew once discovery is complete; and it is further

ORDERED that the parties must appear for a virtual status conference before this court on August 17, 2021, at 11:00 a.m. via Microsoft Teams (separate link was provided).

This constitutes the decision and order of the court.

5/6/2021
DATE


ERIKA M. EDWARDS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE