

Martinez v Won Hee Lee
2021 NY Slip Op 32937(U)
November 8, 2021
Supreme Court, Queens County
Docket Number: Index No. 701515/18
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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LUPE MARTINEZ,

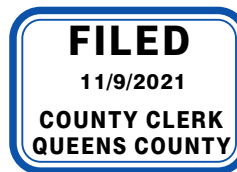
Plaintiff,
-against-

Index No.: 701515/18
Mot. Date: 8/17/21
Mot. Seq. 6

WON HEE LEE and KYUNG SOOK LEE,
Defendants.

-----X
WON HEE LEE and KYUNG SOOK LEE,

Third-Party Plaintiff,
-against-



J YOO CORP.,
Third-Party Defendants.

-----X
WON HEE LEE and KYUNG SOOK LEE,

Second Third-Party Plaintiffs,
-against-

JAMAICA CENTER IMPROVEMENT
ASSOCIATION, INC. and JAMAICA
AVENUE MALL IMPROVEMENT
ASSOCIATION INC.,

Second Third-Party Defendants.

-----X
J YOO CORP.,
Third Third-Party Plaintiff,

-against-

JAMAICA CENTER IMPROVEMENT
ASSOCIATION, INC., JAMAICA AVENUE
MALL IMPROVEMENT ASSOCIATION
INC. and ATLANTIC MAINTENANCE
CORP.,

Third Third-Party Defendants.

-----X

The following papers were read on this motion by defendants/third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/third third-party plaintiff J. Yoo Corp. for an order vacating the Note of Issue and Certificate of Readiness; and on the cross-motion by defendants/third third-party defendants Jamaica Center Improvement Association, Inc. d/b/a Jamaica Avenue Mall Improvement Association Inc., s/h/a Jamaica Center Improvement Association, Inc. and Jamaica Avenue Mall Improvement Association, Inc. for an order vacating the Note of Issue and Certificate of Readiness.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits	EF 223-233
Notice of Cross-Motion-Affidavits-Exhibits	EF 242-244
Answering Affidavits-Exhibits.....	EF 269-270
Replying Affidavits-Exhibits.....	EF 271-277

Upon the foregoing papers, it is ordered that the motion by defendants/third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/third third-party plaintiff J. Yoo Corp. and the cross-motion by defendants/third third-party defendants Jamaica Center Improvement Association, Inc. d/b/a Jamaica Avenue Mall Improvement Association Inc., s/h/a Jamaica Center Improvement Association, Inc. and Jamaica Avenue Mall Improvement Association, Inc. seeking vacatur of the Note of Issue and Certificate of Readiness are both denied.

The underlying action arises out of a sidewalk trip-and-fall of plaintiff Lupe Martinez, that occurred on September 12, 2017. Pursuant to this Court’s Order, dated December 21, 2020, this Court previously vacated the Note of Issue due to, *inter alia*, outstanding discovery due from the plaintiff. Thereafter, the plaintiff filed a Note of Issue, on or about May 28, 2021. Movants and cross-movants now seek to vacate the Note of Issue again.

Defendants/third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/third third-party plaintiff J. Yoo Corp. move for an order vacating the Note of Issue and Certificate of Readiness; and defendants/third third-party defendants Jamaica Center Improvement Association, Inc. d/b/a Jamaica Avenue Mall Improvement Association Inc., s/h/a Jamaica Center Improvement Association, Inc. and

Jamaica Avenue Mall Improvement Association, Inc. Cross move for an order vacating the Note of Issue and Certificate of Readiness.

After a review of the record, the Court finds that the plaintiff has not fully complied with the December 21, 2020 Order and has not provided full and complete responses to movant's Notice for Discovery and Inspection, dated October 29, 2020. Specifically, the plaintiff has not provided: the complete legal files for the other actions where the plaintiff alleged similar injuries to those in the instant case. In opposition, plaintiff's attorney states that his office has been attempting to ascertain whether such files still exist and believes that at least two of the requested files do not exist anymore.

Plaintiff shall provide the complete legal files for the other actions where the plaintiff has alleged similar injuries to those in the instant case. If plaintiff cannot provide said legal files, the plaintiff shall provide a detailed affirmation from an attorney affirming that said legal files do not exist anymore, as set forth below.

Plaintiff shall submit to a further examination before trial (EBT) and independent medical examination(s)(IME[s]) once the above discovery has been exchanged.

If the plaintiff fails to comply with the dictates of this Order, the plaintiff will be precluded from presenting evidence and testimony at the time of trial, without further Order of the Court. The case shall remain on the trial calendar while the above discovery is completed.

Accordingly, it is

ORDERED that the motion by defendants/third-party plaintiffs Won Hee Lee and Kyung Sook Lee and defendant/third-party defendant/third third-party plaintiff J. Yoo Corp. is denied; and it is further

ORDERED that the cross-motion by defendants/third third-party defendants Jamaica Center Improvement Association, Inc. d/b/a Jamaica Avenue Mall Improvement Association Inc., s/h/a Jamaica Center Improvement Association, Inc. and Jamaica Avenue Mall Improvement Association, Inc. Is denied; and it is further

ORDERED that tjhe plaintiff shall provide full and complete responses to all outstanding discovery demands, including movant’s Notice for Discovery and Inspection, dated October 29, 2020, within thirty (30) days from the date that this Order appears in the minutes of the Office of the County Clerk–NYSCEF system, including full and complete responses to movant’s Notice for Discovery and Inspection, dated October 29, 2020, by providing the complete legal files for the other actions where plaintiff alleged similar injuries to those in the instant case or by providing a detailed affirmation from an attorney affirming that said legal files do not exist; and it is further

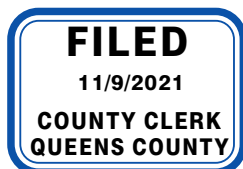
ORDERED that the plaintiff shall appear for a further EBT, on a date, time, and place mutually agreed upon by the parties or via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **no later than** forty-five days (45) days from the date that this Order appears in the minutes of the Office of the Queens County Clerk–NYSCEF system; and it is further

ORDERED that the parties shall designate physicians to conduct a further IME(s) of the plaintiff, within ten (10) days of the completion of the plaintiff’s further deposition, with said medical examination(s) to occur within thirty (30) days thereof; and it is further

ORDERED that if the plaintiff fails to comply with the dictates of this Order, the plaintiff will be precluded from presenting evidence and testimony at the time of trial, without further order of the Court.

The foregoing constitutes the decision and order of the Court.

Dated: November 8, 2021



A handwritten signature in black ink, appearing to read "T. Dufficy".

TIMOTHY J. DUFFICY, J.S.C.