

Douglas v City of Mount Vernon

2021 NY Slip Op 34093(U)

November 29, 2021

Supreme Court, Westchester County

Docket Number: Index No. 57044/2020

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
WINSOME DOUGLAS,

Plaintiff,

DECISION & ORDER

-against-

Index No. 57044/2020
Seq. No. 2

CITY OF MOUNT VERNON, NEW YORK, PD
MTVERNON INVESTORS, LLC and HENRY
SOLLY,

Defendants.
-----X

LEFKOWITZ, J.

The following papers were read on this motion by plaintiff for an order pursuant to CPLR § 3124 compelling defendant PD MtVernon Investors, LLC (“PD MtVernon” or the “LLC”) to produce all documents requested in plaintiff’s March 17, 2021 Combined Discovery and Inspection Demand and for such other and further relief as the Court deems just and proper, including costs and attorneys fees:

Notice of Motion - Affirmation in Support - Memorandum of Law
Affirmation in Opposition - Exhibits A-B

Upon the foregoing papers, this motion is determined as follows:

Plaintiff commenced this negligence action by the electronic filing of a summons and complaint on July 9, 2020. Issue was joined by the service of an answer with cross-claims by the City of Mt. Vernon on July 23, 2020. Defendant Henry Solly served an answer with cross-claims on December 22, 2020; defendant PD MtVernon served an answer with cross-claims on March 2, 2021.

In the complaint, plaintiff alleges negligence causes of action against defendants PD MtVernon and Henry Solly in that they failed properly to maintain the public sidewalk adjacent to their property located at 316 East 3rd Street, Mount Vernon, New York. Said failure to maintain the sidewalk is alleged to have caused a dangerous condition consisting of the remnant of a broken municipal sign that caused plaintiff to trip and fall. There is no dispute as to the ownership of the subject property as evinced by the Bargain and Sale Deed dated February 6, 2018 (NYSCEF Doc. #31). The deed reflects the conveyance by defendant Solly of a fifty (50%) percent interest in the subject property to defendant PD MtVernon such that they share ownership as tenants in common.

Upon the instant motion, plaintiff seeks an order compelling defendant PD MtVernon to comply with plaintiff's March 17, 2021 Combined Discovery and Inspection Demand to the extent that said defendant responded to five of plaintiff's demands with the phrase "Response declined, Improper demand" without further explanation or basis for its refusal to disclose the requested material as required by CPLR § 3122(a)(1). The demands at issue are as follows:

4. Copies of defendant PD MtVernon Investors, LLC's ("defendant PD") Bank records relating to the ownership, occupancy, operation and management of the 316 East 3rd Street property, from the date that the property was acquired up to and including May 1, 2018.
* * *
6. Copies of defendant PD's New York State limited liability business structure's organizational documents, membership agreements and any other governing documents.
7. Copies of defendant PD's receipts for payment of fees connected to annual New York State Secretary of State's Limited Liability Company registration between the date of its organization and May 1, 2018.
8. Copies of all checks used for payment of property taxes on 316 East 3rd Street, Mount Vernon, New York, between the date of its purchase and May 1, 2018.
* * *
13. Copies of all documents relating to the purchase of 316 East 3rd Street by defendant PD.

Plaintiff states that apart from the information on the Bargain and Sale Deed, there is no public information available concerning the names of the members of the defendant PD MtVernon. As such, plaintiff submits that in order to determine who was responsible for managing the subject property on behalf of the limited liability company, and to understand the business of the company, it is necessary to examine documents that reflect the underlying structure of the company, such as the operating agreement or other instruments governing the purpose, operation and management thereof. Plaintiff asserts that each of the above demands is intended to result in the disclosure of documents providing relevant and probative evidence of defendants' role in the control, operation and management of the subject property.

Defendant PD MtVernon opposes the motion and argues that plaintiff is not entitled to discover the documents and information to which it has objected because they are in no way material and necessary to the prosecution of the plaintiff's action. Defendant submits that while plaintiff's causes of action allege negligence in the maintenance of the public sidewalk adjacent to the subject property, plaintiff bears the burden of proving that a dangerous condition existed; there was a duty on the part of defendants to prevent or remedy such a condition; that defendants were negligent in the fulfillment of that duty; and that defendants' negligence proximately caused plaintiff's accident.

Defendant argues that in the absence of any issue regarding the ownership of the subject property, plaintiff cannot establish any probative connection between the documents in dispute and the issues of whether a dangerous condition existed, whether the law imposed a duty on defendants to maintain the subject sidewalk and, if so, whether defendants were negligent in the discharge of that duty and proximately caused the accident.

Finally, while defendant contends that the information sought by plaintiff is irrelevant to the issues in the action, defendant cites to the New York State Department of State website, wherein there are corporate documents, including articles of incorporation, available for public viewing. Citing the Court's holding in *In the Matter of Louis Beryl, Deceased, et al*, 118 AD2d 705 [2d Dept 1986], defendant submits that a litigant may not be compelled to exchange documents that are available to all parties.

In reply, plaintiff again asserts that the documents sought are material and relevant to the prosecution of the case and points out that the documents may lead to the discovery of information regarding the identity of individuals responsible for any damages awarded to plaintiff. In that vein, plaintiff argues that the discovery demands are relevant to the role that defendant PD MtVernon played in the daily operations of the subject property, and whether it is anything more than a shell company intended, *inter alia*, to deprive plaintiff of compensation of its individual members for injuries attributable to defendants' negligence.

Legal Analysis/Discussion

This motion requires the Court to determine whether the discovery sought in plaintiff's March 17, 2021 combined demands seeks information material and relevant to the prosecution of this action. After a review of the demands, the pleadings and the papers submitted on the motion, the Court answers this question in the negative.

It is well settled that New York law requires "full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR § 3101). 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 [1968]; *see Kapon v Koch*, 23 NY3d 32 [2014], *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v Herbert Slepoy Corp.*, 74 AD3d at 1139). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*see Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

With these general principles in mind, the Court turns to plaintiff's motion. Generally, plaintiff asserts that plaintiff is entitled to the discovery of documents providing evidence of defendant PD MtVernon's role in the control, operation and management of the subject property. The documents requested include records relating to the ownership, occupancy, operation and management of the property, copies of its New York State limited liability business structure's organizational documents, membership agreements and governing documents, copies of receipts for the payment of fees connected to the company's annual registration with the New York Secretary of State, and copies of checks evidencing the payment of property taxes on the subject property, *inter alia*. Plaintiff submits these documents will reveal the purpose, origins and management of defendant PD MtVernon and the identity of its managing directions, which is alleged to be essential to plaintiff's case.

The Court disagrees. In order to establish that the defendants were negligent, plaintiff need only demonstrate (1) a duty owed by the defendants to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom (*Solomon v New York*, 66 NY2d 1026, 1027 [1985]). The documents sought in plaintiff's March 17, 2021 combined demands as objected to by defendant PD MtVernon do not seek information relevant to these issues. Instead, plaintiff seeks discovery regarding the status of the defendant LLC, as well as records relating to the LLC's control, operation and management of the subject property. Because the ownership of the subject property and the existence of the LLC are not in dispute, plaintiff has failed to establish that the requested discovery is likely to be probative of any issue in this case.¹

Accordingly, it is

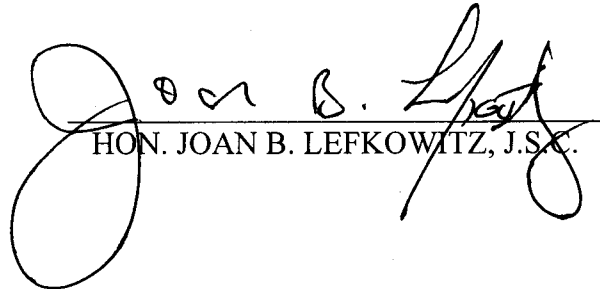
ORDERED that the plaintiff's motion is denied; and it is further

ORDERED that counsel are directed to appear for a virtual conference via Microsoft Teams before Court Attorney Referee Robert Pierson on November 30, 2021 at 9:15 a.m. or as hereafter directed by the Court; and it is further

¹ The Court notes that the LLC is represented by in-house assigned insurance counsel; to the extent plaintiff's efforts to establish that the LLC does not exist succeed, plaintiff may snatch defeat from the jaws of victory by negating the availability of insurance coverage.

ORDERED that plaintiff shall serve a copy of this decision and order upon all parties with notice of entry within 10 days of entry.

Dated: White Plains, New York
November 29, 2021



HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

All Counsel by NYSCEF

cc: Compliance Part Clerk