

Evans v West 137th St. LP

2022 NY Slip Op 30949(U)

March 24, 2022

Supreme Court, New York County

Docket Number: Index No. 154932/2017

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

KENNETH EVANS,

Plaintiff,

- v -

WEST 137TH STREET LP, WEST 137TH STREET ASSOCIATES LP, PRESTIGE MANAGEMENT INC.

Defendants.

-----X

INDEX NO. 154932/2017

MOTION DATE 03/23/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for DISCOVERY

The motion by plaintiff for an order compelling defendants to produce an additional witness for a deposition is denied.

Background

In this personal injury action, plaintiff contends that as he was entering a building owned and operated by defendants, he slipped and fell on a wet substance on the floor and broke his right elbow. Plaintiff seeks the deposition of Shima Mgoudo¹, a porter at the building who plaintiff insists was working on the day of the accident. He argues that at the deposition of another witness for defendants (Kevin Williams), Mr. Williams claimed that Mr. Mgoudo was supposed to maintain the cleanliness of the building and that Mr. Mgoudo's job is to place mats

¹ Plaintiff refers to this potential witness as Nguoda while defendants (and the deposition transcript) spell his name as Mgoudo.

down when it rains. Mr. Williams also noted that he was not at the building on the day of the accident as he was in court responding to a ticket issued to the building.

In opposition, defendants claim they have already produced a witness who had the requisite knowledge (Mr. Williams was the super for the building) and that the porter's shift ended at 4 p.m. on the day of the accident. Defendants insist because the accident purportedly happened around 10-11 p.m., there is no reason to depose the porter because it was Mr. Williams' job to put down mats when the porter was not on duty. They also point out that a weather report from that day shows that there was heavy rain at 7:51 p.m., long after the porter's shift ended.

In reply, plaintiff emphasizes that the porter has personal information about the accident, was working that day and so he should have the right to depose this witness.

Discussion

“Disclosure in civil actions is generally governed by CPLR 3101(a), which directs: there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof. We have emphasized that the words, ‘material and necessary’, are ... 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. A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’—i.e., relevant—regardless of whether discovery is sought from another party. The statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for

ambush and unfair surprise” (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d 157 [2018] [internal quotations and citations omitted]).

The Court’s analysis begins with the deposition of Mr. Williams, the building’s super. He explained that on the day of the accident, “I wasn’t working. I was off. I was at court for a ticket that the building received. I didn’t know of the incident until the following day” (NYSCEF Doc. No. 116 at 33). Mr. Williams added that when he is not on site, it is the porter’s job to put down mats (*id.*).

He observed that when he got back from court, he did not see any mats down in the vestibule (*id.* at 37). Mr. Williams claimed that “I didn’t see any mats down then, and the floor wasn’t wet” (*id.* at 38). He admitted that it would have been his responsibility to put down mats after 4 p.m. because the porter was already finished working for the day (*id.* at 42).

Based on this deposition, the Court sees no reason for the deposition of Mr. Mgoudo. Mr. Williams claims that he saw that the mats were not down when he returned from court, which was after Mr. Mgoudo had already left for the day. And Mr. Williams admitted it was his responsibility to put down mats when it rained when the porter had already left. The allegations in this case are that it rained after the porter left and plaintiff slipped and fell between 10 and 11 p.m. that evening, long after Mr. Mguodo’s shift had ended.

The Court simply does not see what utility a deposition of Mr. Mgoudo would provide. Defendants have already admitted that there were no mats down when his shift ended and that another person, Mr. Williams, was responsible for putting down mats when the accident happened. What happened six to seven hours before the incident is not relevant especially where the only issue (whether Mr. Mgoudo put the mats down himself) has already been resolved by defendants. Moreover, defendants claim that the weather report shows it rained heavily at 7:51

(although the exhibit they attach is not exactly clear on this point) and plaintiff did not counter this point.

In other words, plaintiff did not sufficiently explain how the deposition of Mr. Mgoudo would be either material or necessary to the prosecution of his case. This witness was not working when the accident happened, there is no evidence he was an eyewitness and another witness offered a first-hand account of the central issue in the case. At best, Mr. Mgoudo’s testimony would be cumulative.

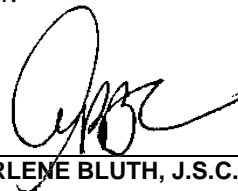
Accordingly, it is hereby

ORDERED that the motion by plaintiff to compel Mr. Mgoudo’s deposition is denied.

Next Conference: March 31, 2022 per NYSCEF Doc. No. 104.

3/24/2022

DATE



ARLENE BLUTH, 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