

**Zilberberg v IRL Realty, Inc.**

2022 NY Slip Op 30963(U)

March 17, 2022

Supreme Court, Kings County

Docket Number: Index No. 528020/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 (MOA) of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on 17<sup>th</sup> day of March, 2022.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

-----X  
ALEXANDER ZILBERBERG,

*Plaintiff,*

-against-

IRL REALTY, INC. and ADOM RENTAL  
TRANSPORTATION, INC.

*Defendants.*  
-----X

Index No.: 528020/2019

DECISION AND ORDER

Motion Sequence # 3

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and

Affidavits (Affirmations) Annexed ..... 48-57,

Opposing Affidavits (Affirmations)..... 70-73,

Reply Affidavits (Affirmations) ..... 75-76

After a review of the papers and oral argument, the Court finds as follows:

The instant action results from an alleged accident that occurred on November 27, 2019. Plaintiff Alexander Zilberberg (hereinafter the "Plaintiff") allegedly injured himself while ascending a staircase at the premises known as 3015 West 23<sup>rd</sup> Street, Brooklyn, New York (hereinafter the "Premises"). The Premises are purportedly owned by the Defendant IRL Realty Inc. (hereinafter the "Defendant IRL Realty"). The Plaintiff's injury allegedly occurred at the

business premises of Adom Rental Transportation, Inc. (hereinafter “Defendant Adom Rental”), a tenant of Defendant IRL Realty.

Defendant IRL Realty now moves (motion sequence #3) for an order pursuant to CPLR 2304 quashing Plaintiff’s subpoena issued to Sol Eidlin seeking his non-party deposition. Defendant IRL Realty further moves for a protective order, pursuant to CPLR 3103(a), prohibiting Plaintiff from deposing Sol Eidlin or calling him as a trial witness, on the basis that 1) Sol Eidlin has no interest in the property, and 2) spousal privilege protects and bars his testimony. Defendant IRL Realty contends that Rose Eidlin is the owner of IRL Realty Inc. Defendant IRL Realty contends that Irene Eidlin and Ilana Luba are the only corporate members and employees of IRL Realty Inc. Sol Eidlin is purportedly Rose Eidlin’s spouse. The Plaintiff opposes the motion. The Plaintiff contends that the Defendants’ depositions indicate that Sol Eidlin participated in some capacity with the IRL Realty Property and his deposition is material to the prosecution of this action.

As an initial matter, CPLR 2304 states, “A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable...Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify.” Defendant IRL Realty argues that Plaintiff is “merely fishing for additional information of marginal value.” (IRL Realty’s Affirmation in Support, NYSCEF Document 49). Rose Eidlin, during her deposition indicated that Mr. Eidlin participated in picking up rent checks from tenants, either with Rose Eidlin or on his own. (Rose Eidlin’s Deposition Transcript, NYSCEF Document 56, page 45). Additionally, Osei Yaw, the purported principal owner of Adom Rental Transportation, Inc., stated during his deposition that the landlord of the Premises is Sol and that Sol collects rent every month.

(Osei Yaw's Deposition Transcript, NYSCEF Document 72, page 24). Apparently, after Hurricane Sandy, the Premises were damaged, and Osei Yaw intended to make repairs. Osei Yaw states in his deposition that he spoke with Sol Eidlin about these repairs and sought consent from him to build an office upstairs. Sol Eidlin purportedly gave his verbal consent. (Osei Yaw's Deposition Transcript, NYSCEF Document 72, page 28-29). This constitutes a sufficient basis to deny Defendant IRL Realty's application to quash Plaintiff's subpoena to depose Sol Eidlin on the basis he has no knowledge of or meaningful connection to the Premises.

CPLR 3103(a) states, "[t]he court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." In support of their motion for a protective order prohibiting the non-party deposition of Sol Eidlin, Defendant IRL Realty also raises spousal privilege (CPLR 4502(b)) as a bar.

"The spousal privilege does not protect 'all the daily and ordinary exchanges between the spouses, but merely those which would not have been made but for the absolute confidence in, and induced by, the martial relationship.'" *People v. Beard*, 197 AD2 582, 602 NYS2d 430 [2d Dept. 1993], quoting *People v. Melski*, 10 NY2d 78, 80, 217 NYS2d 65 [1961]. Furthermore, "this privilege does not attach to 'ordinary conversations relating to matters of business.'" *Carver Fed. Sav. Bank v. Shaker Gardens, Inc.*, 167 AD3d 1337, 90 NYS3d 653 [3d Dept. 2018], quoting *Johnson v. Johnson*, 25 AD2d 672, 673, 268 NYS2d 403 [1966]. Ordinary conversations between Sol and Rose Eidlin relating to matters of business, where there would be no reason to suppose

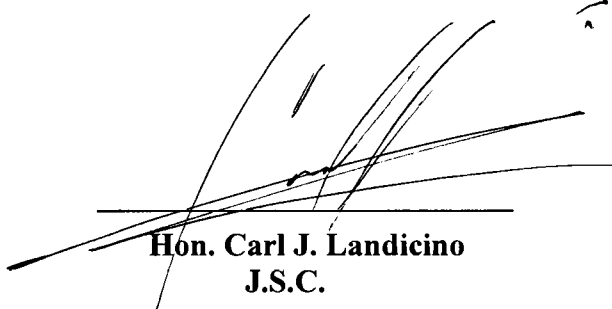
they would have been unwilling to converse in the presence of another, is not protected by the spousal privilege. *See Parkhurst v. Berdell*, 110 NY 386, 18 NE 123 [1888]. Moreover, much of the inquiry would concern what Mr. Eidlin saw, heard or did. As such, the spousal privilege does not serve as a bar to the non-party deposition of Sol Eidlin in this action. Notwithstanding this, the Court does not find that spousal privilege may not be appropriately raised, in relation to specific questions during the deposition. Any dispute regarding such questions shall be reserved for the Court after the deposition and determined upon application by any party.

Based on the foregoing, it is hereby ORDERED as follows:

The Defendants' motion (motion sequence #3) to quash the subpoena served on Sol Eidlin is denied, and questions, if any, that could impact spousal privilege shall be reserved for Court determination after the deposition pursuant to the CPLR.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
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**Hon. Carl J. Landicino**  
**J.S.C.**

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