

Jordan v BBP St Owner, LLC
2022 NY Slip Op 31403(U)
April 28, 2022
Supreme Court, New York County
Docket Number: Index No. 158867/2017
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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CHRISTOPHER JORDAN,

Plaintiff,

INDEX NO. 158867/2017

MOTION DATE 04/06/2022

MOTION SEQ. NO. 007

- v -

BBP ST OWNER, LLC, QUICK PARK PCVST GARAGE
LLC, PRECISION TIME SYSTEMS, INC. D/B/A PRECISION
TECHNOLOGY SOLUTIONS, INC., FAAC
INTERNATIONAL, INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

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QUICK PARK PCVST GARAGE LLC

Plaintiff,

Third-Party
Index No. 595695/2018

-against-

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220

were read on this motion to/for DISCOVERY.

BACKGROUND

The instant matter involves an incident which occurred on January 8, 2017. Plaintiff was walking through and out of an indoor parking garage within Stuyvesant Town. Plaintiff was a monthly tenant at the Garage. As was his custom and practice on Sundays, plaintiff drove his vehicle into the garage, left it parked alongside a wall for the attendant to park, and began

walking to exit the garage when the accident occurred. Plaintiff was hit by the exit gate/parking arm that was in the process of closing as he exited.

PENDING MOTION

On April 9, 2022, plaintiff moved for an order compelling Defendant, Quik Park PCVST Garage, LLC, to produce Fazial Kahn for a deposition. The motion was fully briefed and submitted to this court for determination on April 6, 2022. For the reasons stated below, the motion is granted.

DISCUSSION

To date, the following depositions have taken place: Plaintiff appeared for a deposition on August 10, 2021 and a continued deposition on September 27, 2021; Defendant, BPP St Owner, LLC, produced a witness on November 16, 2021, and Defendant, Quik Park produced Meer Kahn for a deposition on December 1, 2021.

At the deposition of Meer Kahn, on behalf of Defendant, Quik Park, Mr. Kahn testified another individual, Faizal Kahn, was an attendant that worked, and continues to work, in the location of the subject incident. Mr. Kahn further testified that Faizal Kahn was present at the time of the subject incident and notified him about the same. Faizal Kahn was present at the scene with Plaintiff at the time ambulance personnel arrived at the scene. Faizal Kahn was identified in the surveillance video footage of the subject incident disclosed in this matter.

Plaintiff requested the defendants produce Faizal Kahn and they have refused.

Defendants' opposition rests on the fact Meer Kahn, produced for a deposition, has knowledge concerning Quik Park's policies and procedures and responded to the scene after being notified of plaintiff's incident. Plaintiff does not dispute that Mr. Kahn possessed certain knowledge of Quik Park's policies and procedures or that he responded to the scene after the

incident. The basis for plaintiff's motion to compel is that Faizal Kahn was identified by Mr. Meer Kahn as the individual working within the subject garage on the day and at the time of plaintiff's accident. Faizal Kahn was the individual who notified Mr. Meer Kahn of the incident, was present inside the garage at the time of Plaintiff's accident and is seen on the surveillance video assisting Plaintiff almost immediately after the accident. Given this, Faizal Kahn is clearly an individual who possesses information directly relevant and necessary to this matter that differs from the information Meer Kahn possesses and testified to.

It is well established that CPLR section 3101(a) entitles a party to "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." What constitutes as material and necessary includes "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." *Andon v. 302-304 Mott St. Assoc.*, 94 NY 2d 740, 746 (2000). Moreover, every request for discovery must be gauged in the context of the particular case and in light of the evidence presented to the Court. *Id.*

In order to show that additional depositions are necessary, the moving party must show (1) that the representatives already deposed had insufficient knowledge, or were otherwise inadequate, and (2) there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case (*see, Simon v. Advance Equip. Co.*, 126 A.D.2d 632; *Schillaci v. Jamaica Sav. & Loan*, 90 A.D.2d 770, 455 N.Y.S.2d 294).

Here plaintiff has met its burden in establishing that Faizal Kahn may possess information concerning the condition of the garage at the time the incident occurred, including the status of the pedestrian door, how the subject incident occurred, and plaintiff's physical

condition immediately afterwards. This information differs from Meer Kahn’s deposition testimony as Mr. Kahn, undisputedly, was not present within the garage at the time of the subject incident.

Based on the foregoing the motion is granted.

CONCLUSION

ORDERED that plaintiff’s motion to compel is granted; and it is further

ORDERED that defendants shall, within 45 days, produce Faizal Kahn for deposition, at the office of counsel for plaintiff, on a date and at a time convenient for the parties; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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SABRINA KRAUS, J.S.C.

4/28/2022
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: