

Cruz v Webster

2022 NY Slip Op 34498(U)

January 18, 2022

Supreme Court, Dutchess County

Docket Number: Index No. 2020-52688

Judge: Christie L. D'Alessio

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 DUTCHESS**

PRESENT: HON. CHRISTIE L. D’ALESSIO, J.S.C.

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REINALDO CRUZ,

Plaintiff(s),

-against-

DECISION AND ORDER

Index No. 2020-52688

Motion Sequence No. 3, 4

JOSEPH C. WEBSTER,

Defendant(s).

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The following papers were filed to New York State Courts Electronic Filing (“NYSCEF”) and read on Defendants’ motion (Motion Seq. No. 3) to compel the deposition of plaintiff and related relief; and Plaintiff’s cross-motion (Motion Seq. No. 4) to compel Defendants to serve a “compliant” response to plaintiff’s demand for a bill of particulars as to affirmative defenses.

NYSCEF Doc. No. 40-57

Background Facts:

Plaintiff commenced this action for personal injuries against defendants arising from a motor vehicle accident that occurred on 11/19/2019. It is alleged that defendant James Webster was the operator of the vehicle which struck plaintiff’s car from the rear. Plaintiff commenced this action by filing pleadings on or about 09/02/2020. Defendants interposed an answer on 12/03/2020. A Preliminary Conference stipulation and order was filed on 03/02/2021 (hereinafter, “Preliminary Conference Order”) which set forth the discovery timetable for, as pertinent to the instant application, responses to demands for bill of particulars and party depositions.¹

Defendants filed a motion (Motion Seq. No. 3) to compel the deposition of plaintiff or preclude such evidence or testimony at trial. Counsel contends that the plaintiff failed to appear for a deposition, despite counsel’s good faith attempts to schedule same and/or resolve any disputes related thereto prior to filing the instant motion.

¹ NYSCEF Doc. 17.

Plaintiff filed a cross-motion (Motion Seq. No. 4) to compel defendants to serve a “compliant” response to plaintiff’s demand for a bill of particulars as to any affirmative defenses. Counsel contends that the plaintiff served a demand for a verified bill of particulars dated 05/05/2021 requesting amplification of any affirmative defenses.² In opposition, defense counsel argues that counsel provided a proper response to plaintiff’s demand insofar as defense counsel filed the sworn affidavit of defendant James Alex Webster in connection with prior motion practice which amplified the defendants’ affirmative defense of “emergency doctrine” by stating the following:

“As I was traveling behind the plaintiff’s vehicle on the left-most lane of Interstate 684, the plaintiff, suddenly and without warning, stopped abruptly. I slammed on my brakes, but unfortunately there was not enough time to avoid the collision in my lane of travel. There was nowhere for me to turn my vehicle out of my lane as there was an 18-wheeler truck to my right. Had plaintiff operated his vehicle with reasonable regard for other vehicles on the highway, and brought his vehicle to a controlled stop, I would have been properly notified of his intention to stop. Plaintiff’s sudden and abrupt stop was the direct cause of this accident.”³

Decision:

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” 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” (see *Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether the 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]).

“The nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is a matter generally left to the discretion of the Supreme Court” (*Carbajal v Bobo Robo*, 38 AD3d 820, 821 [2d Dept 2007] [internal quotation marks omitted]). “Willful and contumacious conduct can be inferred from repeated noncompliance with court orders ... coupled with either no excuses or inadequate excuses” (*Russo v Tolchin*, 35 AD3d 431, 434 [2d Dept 2006]; see *Prappas v Papadatos*, 38 AD3d 871, 872 [2d Dept 2007]).

In applying the foregoing principles governing discovery to the case at bar, this Court finds that the plaintiff is entitled to an appropriate response to the plaintiff’s Demand for a Verified Bill of Particulars dated 05/05/2021 filed as NYSCEF Doc. 50. While the defendants filed an affidavit in connection with prior dispositive motions which purport to amplify the defendants’ affirmative defense of “emergency situation” or the “emergency doctrine”, plaintiff is nonetheless entitled to a formal written response specifically directed to plaintiff’s prior demand disclosing any and all

² NYSCEF Doc. 50.

³ NYSCEF Doc. 49, Affidavit of Defendant James Alex Webster.

affirmative defense(s) intended to be raised in this matter.

Likewise, defendant is entitled to depose the party-plaintiff. Notably, the Preliminary Conference Order directed that all party deposition shall be completed by 05/31/2021. It is undisputed that same has not been completed as of the return date of the instant motions. Moreover, plaintiff does not raise any objection to producing the plaintiff. Rather, plaintiff's cross-motion is limited to plaintiff's demand for a proper response to the previously served demand for a bill of particulars as to affirmative defenses.

Insofar as both counsel for the plaintiff and counsel for the defendants request any further appropriate relief related to the adverse party's alleged willful and contumacious disregard, it is well-settled that "[t]he nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is a matter generally left to the discretion of the Supreme Court" (*Carbajal v Bobo Robo*, 38 AD3d 820 [2d Dept 2007]). This Court finds that neither party has sufficiently established the adverse party's non-compliance rose to a level of willful and contumacious disregard towards their respective discovery obligations to warrant any related relief pursuant to CPLR 3126 at this juncture.

All other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this court, notwithstanding the specific absence of reference thereto.

Based on the foregoing, it is hereby

ORDERED that, on or before 01/28/2022, defendants shall serve a written response to plaintiff's Demand for a Verified Bill of Particulars filed as NYSCEF Doc. 50. It is further

ORDERED that, the plaintiff's deposition shall be completed no later than 03/07/2022. It is further

ORDERED that, insofar as the motion record does not address the status of completion of Defendants' depositions, the defendants' depositions shall be completed no later than 03/07/2022.

Any other requested relief not specifically granted herein is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: 01/18/2022
Poughkeepsie, New York


HON. CHRISTIE L. D'ALESSIO, J.S.C.

TO: All parties/counsel of record by NYSCEF

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge D'Alessio's Chambers, please do not submit any copies. Submit only the original papers.