

Stoutenborough v Vanderbilt Glass Sys., Inc.

2023 NY Slip Op 30892(U)

March 23, 2023

Supreme Court, New York County

Docket Number: Index No. 155522/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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KATHLEEN STOUNTENBOROUGH,

Plaintiff,

- v -

VANDEBUILT GLASS SYSTEM, INC., SUN MECHANICAL
CORP., RIVERVIEW EAST OWNERS, INC., MILFORD
MANAGEMENT CORP.

Defendant.

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INDEX NO. 155522/2022

MOTION DATE 01/19/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents, and after a conference with the Court, Defendant Vanderbuilt Glass System, Inc.'s ("Vanderbuilt") motion seeking to quash the subpoena directed to Ronald M. Goldstein ("Goldstein") is granted.

I. Background

Plaintiff initiated this action on June 30, 2022 (NYSCEF Doc. 1). Plaintiff alleges that on October 7, 2021, Vanderbuilt was the general contractor responsible for renovating Unit 18D located at 251 East 32nd Street in Manhattan (the "Premises") (*id.* at ¶ 6). Allegedly, Plaintiff was walking on the sidewalk adjacent to the premises when she was hit in the face by a tool being used at the Premises (*id.* at ¶ 27). Plaintiff seeks relief under theories of common law negligence and *res ipsa loquitor*, and violations of New York Labor Law §§ 240(1) and 241(6). Vanderbuilt filed its Answer on September 19, 2022 (NYSCEF Doc. 4).

Shortly thereafter, on November 18, 2022 Plaintiff served a notice of deposition to Goldstein (NYSCEF Doc. 5). On December 7, 2022, Vanderbuilt made the instant motion to quash

(NYSCEF Doc. 6). After this motion was briefed, and pursuant to discussion between the parties and the Court, on March 15, 2023, Plaintiff amended her Complaint to include Defendants Sun Mechanical Corp. (“Sun”), Riverview East Owners, Inc. (“Riverview”), and Milford Management Corp. (“Milford”) (NYSCEF Doc. 32). It is alleged that Sun was a contractor who was working in the Premises (*id.* at ¶ 32). Riverview and Milford are alleged to own and/or manage the Premises, and allegedly took measures to safeguard pedestrians using the sidewalk near the Premises (*id.* at ¶¶ 16-21; 47-48).

Vanderbuilt argues the subpoena is improper as Plaintiff seeks to depose Goldstein on information garnered in his capacity as an investigator retained by Vanderbuilt’s insurer (NYSCEF Doc. 7 at ¶ 8). Vanderbuilt argues such information is immune from disclosure (*id.* at ¶ 9).

In opposition, Plaintiff argues that Goldstein’s investigation file is not attorney work product and there is no evidence that Goldstein’s records were prepared in anticipation of litigation (NYSCEF Doc. 18). Plaintiff argues that it is Vanderbuilt’s burden to show the material was prepared in anticipation of litigation or constitutes attorney work product, but that it has failed to do so (*id.* at ¶ 20).

In reply, Vanderbuilt argues that the case law Plaintiff has cited is inapposite to the facts of this case, as Plaintiff cites to cases regarding insurance coverage disputes rather than tort liability (NYSCEF Doc. 26). Vanderbuilt also argues that since the statements from an investigator are transmitted to an attorney through the medium of the insurance carrier, the statements of the investigator should be deemed privileged.

II. Discussion

As a preliminary matter, it is within a trial court’s discretion to quash a subpoena as overly broad where, although some of the records sought may be relevant, all of the demands are prefaced

by the words “any” and “all” (*Napoli v Bern*, 197 AD3d 510 [1st Dept 2020]; *Bour v 259 Bleecker LLC*, 104 AD3d 454, 455 [1st Dept 2013]; *Rodriguez v Crescent Contracting Corp.*, 305 AD2d 215 [1st Dept 2003]; *Grotallio v Soft Drink Leasing Corp.*, 97 AD2d 383, 383 [1st Dept 1983]). In reviewing the subpoena at issue, the Court finds that every single demand is prefaced by the word “any” or “all” (*see* NYSCEF Doc. 19). For example: demand 1 requests “[a]ll documents regarding or relating to the Investigation”; demand 4 requests “[a]ny documents regarding or relating to any Statement”; while demand 12 requests “[a]ny Report”.

Because the subpoena is overbroad, it would require the production of materials which may be privileged (*Grotallio, supra* at 383). To the extent the subpoena seeks disclosure of documents which are contained in Vanderbilt’s insurer’s claim file, those documents, if prepared for litigation against Vanderbilt, are clearly immune from disclosure or subpoena pursuant to decades of First Department precedent (*see Springer v Tishman Speyer Properties, LP*, 211 AD3d 595, 596 [1st Dept 2022] citing *Grotallio, supra*; *McCluer Corp. v U.S. Rebar, Inc.*, 66 AD3d 416 [1st Dept 2009]; *Rogers v Sears, Roebuck and Co.*, 248 AD2d 156 [1st Dept 1998]; *Kandel v Tocher*, 22 AD3d 513 [1st Dept 1965]).

Further, as the subpoena fails to specify with reasonable precision the documents sought, neither the Court nor any party are required to “cull the good from the bad” (*Grotallio, supra* citing *People v Doe*, 39 AD3d 869 [1st Dept 1972]; *see also Oak Beach Inn Corp. v Town of Babylon*, 239 AD2d 568 [2d Dept 1997]; *Koch v Sheresky Aronson & Mayefsky LLP*, 33 Misc.3d 12228[A] [Sup. Ct., N.Y. Co. 2011]).

While the Court does not make a judgment regarding whether Goldstein has in his possession relevant information which may be disclosed, the Court finds that Vanderbilt’s motion to quash should be granted because: (1) there has not yet been a preliminary conference; (2)

multiple Defendants have not yet appeared; (3) little, if any, paper discovery has been exchanged, and (4) the subpoena is overbroad. Indeed, much of the information Plaintiff seeks may be disclosed by Vanderbuilt through paper discovery. This ruling is not to say that a more tailored subpoena may not be enforced if it seeks relevant, necessary, and discoverable information after further paper discovery has ensued.

Accordingly, it is hereby,

ORDERED that Defendant Vanderbuilt Glass System, Inc.’s motion to quash a subpoena issued by Plaintiff Kathleen Stoutenborough to Ronald M. Goldstein is granted; and it is further

ORDERED that after all parties appear or their time to appear has lapsed, the parties are directed to submit a proposed preliminary conference order to the Court on or before May 17, 2023 via e-mail at SFC-Part33-Clerk@nycourts.gov. In the event the parties are unable to agree to a proposed preliminary conference order, they shall appear for an in-person preliminary conference with the Court on May 24, 2023 in 60 Centre Street, Room 442 at 9:30 a.m; and it is further

ORDERED that within ten days of entry, counsel for Defendant Vanderbuilt Glass System, Inc. shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>3/23/2023</u>			<u>Mary V Rosado JSC</u>
DATE			HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>
		DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input checked="" type="checkbox"/>
			NON-FINAL DISPOSITION
			<input type="checkbox"/>
			GRANTED IN PART
			<input type="checkbox"/>
			OTHER
			<input type="checkbox"/>
			SUBMIT ORDER
			<input type="checkbox"/>
			FIDUCIARY APPOINTMENT
			<input type="checkbox"/>
			REFERENCE