

Haggerty v Fiore

2023 NY Slip Op 32117(U)

January 24, 2023

Supreme Court, Richmond County

Docket Number: Index No. 151815/2018

Judge: Orlando Marrazzo, Jr.

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
MARY ANNE HAGGERTY,

Plaintiff,

- against -

MARILYN FIORE, DARREN FIORE, AS TRUSTEE OF
THE MARILYN FIORE IRREVOCABLE TRUST, THE
CITY OF NEW YORK, AND THE BROOKLYN UNION
GAS COMPANY d/b/a NATIONAL GRID NEW YORK,

Defendants.
-----X

PART 26

Present:

Hon. Orlando Marrazzo, Jr.

DECISION and ORDER

IndexNo.151815/2018

Motion 003

The papers e-filed as documents numbered “78” through “110” were marked fully submitted on the 14th day of April, 2022.

Plaintiff Mary Anne Haggerty commenced this action to recover damages for personal injuries she sustained on July 18, 2017, when she tripped and fell on the sidewalk abutting 456 Oakland Avenue, Staten Island, New York, a single-family residence owned by Marilyn Fiore and Darren Fiore. Mrs. Haggerty alleges the sidewalk was in a dangerous condition due to an elevation differential of the sidewalk flags. The action as against the Fiore defendants was discontinued; and plaintiff’s causes of action against The City of New York were settled. Brooklyn Union Gas Company’s witness, Walter Stone, was deposed on December 8, 2020. He failed to bring documentation of “post-fall discovery”, therefore, the Court ordered a further deposition of Mr. Stone on March 31, 2022.

Plaintiff moves for an order pursuant to CPLR §3124 compelling defendant Brooklyn Union Gas Company d/b/a National Grid New York (Brooklyn Union) to (1) produce all documents and records in response to her post-EBT demands dated December 9, 2020 and June

13, 2022; (2) award sanctions against defendant's counsel pursuant to 22 NYCRR §130-1 in the amount of \$5,000.00¹; and (3) grant an adverse inference and preclusion against defendant pursuant to CPLR §3126.

Pursuant to CPLR §3101(a), “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action. The essential test is usefulness and reason” (*McMahon v. Manners*, 158 AD3d 616, 617 [2d Dept 2018] [citation omitted]; see *RRengo v. New York City Transit Authority*, 204 AD3d 1049, 1050 [2d Dept 2022]). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*RRengo v. New York City Transit Authority*, 204 AD3d at 1050). In this case, plaintiff's allegations of relevancy are sufficient to establish the factual predicate for the “usefulness” of the items enumerated in her post-EBT demands. The records and documents sought are material and necessary to the prosecution of this action. Brooklyn Union's conclusory objections were improper. Therefore, the branch of plaintiff's motion which seeks to compel the production of all documents and records in response to her post-EBT demands dated December 9, 2020 and June 13, 2022 must be granted.

“The determination whether to strike a pleading or to preclude evidence for failure to comply with court-ordered disclosure lies within the sound discretion of the court” (*U.S. Bank Natl. Assoc. v. Hadar*, 206 AD3d 688, 690 [2d Dept 2022]; see *Kiernan v. Booth Mem. Med. Ctr.*, 175 AD3d 1398, 1399 [2d Dept 2022]). Here, it is the inadequacy of the responses and objections which is at issue. In any event, plaintiff fails to convince the Court that defendant's alleged failure to comply with the Orders relating to post-deposition demands was willful and contumacious. “As

¹ By Stipulation dated November 1, 2022, plaintiff withdrew the branch of the instant motion which seeks an award of sanctions against defendant's counsel.

public policy strongly favors the resolution of actions on the merits whenever possible, the striking of a party's pleading is a drastic remedy that is warranted only where there has been a clear showing that the failure to comply with discovery is willful and contumacious" (*U.S. Bank Natl. Assoc. v. Hadar*, 206 AD3d at 690; *see Gutierrez v. Good Bar, LLC*, 203 AD3d 803, 805 [2d Dept 2022]; *Turiano v. Schwaber*, 180 AD3d 950, 951 [2d Dept 2022]).

Upon the Court's review of the papers filed in support of, and in opposition to this motion, and upon oral argument, it is hereby

ORDERED, on or before February 1, 2023, defendant Brooklyn Union Gas Company d/b/a National Grid New York shall comply with plaintiff's post-EBT demands dated December 9, 2020 and June 13, 2022, requesting the following items relating to the sidewalk at issue:

1. Any and all paving orders;
2. Any and all permits;
3. Any and all work orders;
4. Any and all payments, payment records, and/or compensation regarding the restoration of the sidewalk;
5. Name, address, phone number, including any contact information of the subcontractor, New York Paving;
6. Any and all job control reports;
7. "Cover Memo" and "CAR" (Corrective Action Requested) in the possession of Brooklyn Union's witness, Walter Stone;
8. Any and all investigative correspondence, reports and information relating to the restoration of the sidewalk; and it further

ORDERED, defendant Brooklyn Union Gas Company d/b/a National Grid New York

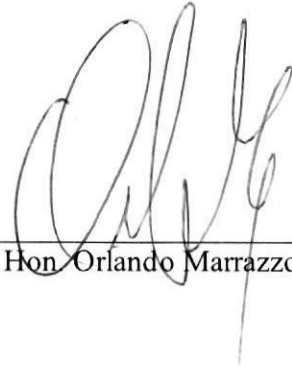
shall diligently attempt to retrieve the foregoing items: in the event the information, records and documents cannot be obtained, Brooklyn Union shall produce an affidavit from an individual with personal knowledge of the efforts made to comply with this Orders; and it is further

ORDERED; the balance of the motion is denied.

ENTER,

Dated:

1/24/23



Hon Orlando Marrazzo, Jr.