

**Vazquez v West 38 Res L.L.C.**

2024 NY Slip Op 31456(U)

April 24, 2024

Supreme Court, New York County

Docket Number: Index No. 153481/2021

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **05M**

*Justice*

-----X

ROMUALDO A. HERNANDEZ VAZQUEZ, SURISADAY  
CARDOSO,

Plaintiff,

**INDEX NO.** 153481/2021

**MOTION DATE** 01/11/2024

**MOTION SEQ. NO.** 001

- v -

WEST 38 RES L.L.C., 555 WEST 38 L.L.C., MIDTOWN  
WEST C L.L.C., 528-534 WEST 39 L.L.C., SITE C GC  
L.L.C., ROCKROSE DEVELOPMENT L.L.C., HUDSON  
YARDS INFRASTRUCTURE CORPORATION,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

WEST 38 RES L.L.C., 555 WEST 38 L.L.C., MIDTOWN WEST  
C L.L.C., 528-534 WEST 39 L.L.C., SITE C GC L.L.C.,  
ROCKROSE DEVELOPMENT L.L.C.

Plaintiff,

Third-Party  
Index No. 596027/2021

-against-

HIGHBURY CONCRETE INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49,  
50, 51, 52

were read on this motion to/for ORDER OF PROTECTION.

Upon the foregoing documents, it is ORDERED that plaintiffs’ unopposed motion is granted.

This action was brought by plaintiffs to recover damages for personal injuries sustained by plaintiff ROMUALDO A. HERNANDEZ (“plaintiff”), in an incident that occurred on January 26, 2021 on the 53rd floor of 555 West 38th Street, New York, New York. Plaintiffs allege that

defendants were negligent and violated the provisions of New York State Labor Law §§200, 240 and 241(6).

With the instant motion plaintiffs move, unopposed and pursuant to CPLR §3103, for a protective order compelling that Section 5(c) of the proposed Preliminary Conference Order be marked “yes.” Plaintiffs also move, unopposed and pursuant to CPLR §3124, to compel third-party defendant HIGHBURY CONCRETE INC. to respond to outstanding discovery demands.

Plaintiffs submitted a Request for Judicial Intervention and a Request for a Preliminary Conference with this court. Subsequently, the court directed the parties to confer and present a proposed Preliminary Conference Order. The proposed order was completed except for one question: Section 5(c), which states: "Defendant(s) waive(s) the right to a General Municipal Law § 50-h hearing: [ ] Yes [ ] No [ ] Held.”

In support of their motion for a protective order, plaintiffs argue that the answer to Section 5(c) should be “yes” as the City of New York is not a named defendant in this matter and therefore, a 50h hearing is not required to proceed. Moreover, plaintiffs submit that the statute of limitations to add the City of New York as a defendant in this matter has expired as this accident occurred approximately three (3) years ago. Furthermore, plaintiffs submit that they were never produced for a 50h hearing, but will be produced at their upcoming depositions, which would achieve the same goal as a 50h hearing.

The decision to grant a protective order pursuant to CPLR §3103 rests in the sound discretion of the court (*see U.S. Pioneer Electronics Corp. v. Nikko Elec. Corp. of America*, 47 NY2d 914 [1979]). When information has previously been discovered and additional discovery sought is not relevant, the court, in exercising its broad discretion, may issue a protective order to

limit the scope of discovery (*see Wolin v. St. Vincent's Hospital & Med. Ctr. of NY*, 304 A.D.2d 348 [1st Dept 2003]).

Here, although the New York City Office of Corporation Counsel represents defendant HUDSON YARDS INFRASTRUCTURE CORPORATION, the City of New York is not a named defendant, as plaintiffs point out. Furthermore, it is axiomatic that this court issuing a Protective Order and compel the New York City Office of Corporation Counsel to mark “Yes” for item #5(c) for the proposed Preliminary Conference Order so that the Preliminary Conference Order can be submitted for approval to this court is essential to circumventing unreasonable delay and annoyance to plaintiffs. Similarly, the information sought from a 50h hearing is irrelevant when the City of New York is not listed as a defendant, and the same information that would be sought at such a hearing will be readily accessible when plaintiffs are produced for their depositions. Notably, the New York City Office of Corporation Counsel has elected not to oppose the instant motion, and any prejudice that could result from compelling a “Yes” response to item#5(c) is mitigated by the fact that plaintiffs will be produced at their upcoming depositions, which will achieve the same goal as a 50h hearing. Accordingly, plaintiffs unopposed motion is granted on this issue.

Next, plaintiffs submit that they served a Notice for Discovery and Inspection dated March 22, 2022 on counsel for third-party defendant HIGHBURY CONCRETE INC. on or about March 24, 2022 with a request to respond by April 22, 2022, but received no response. Thereafter, plaintiffs’ counsel made numerous good-faith efforts to receive responses to plaintiffs’ discovery demands without judicial intervention. When those efforts failed, the instant motion was filed.

Generally, the test for disclosure pursuant to CPLR §3101 is whether the information sought is material and necessary. The test is one of relevance, usefulness and reason (*Allen v*

*Cromwell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). CPLR §3101(a) requires full disclosure of all evidence material and necessary to the prosecution or defense of an action, regardless of the burden of proof (*Weber v Ryder TRS, Inc.*, 49 AD3d 865, 866 [2d Dept 2008]). The terms “material and necessary” in this statute “must ‘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’” (*Matter of Kapon v. Koch*, 23 NY3d 32, 38 [2014], quoting *Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). Pursuant to CPLR §3124 this court can, in its discretion, compel disclosure of information that a party fails to adequately respond to.

Here, third-party defendant Highbury Concrete Inc. has not complied with discovery demands made by plaintiffs that, in this court’s view, are material and relevant to the prosecution of this case. By not complying with plaintiffs’ discovery demands, third-party defendant Highbury Concrete Inc. is deliberately impeding the lawful prosecution of plaintiffs’ action. If counselors for third-party defendant Highbury Concrete Inc. do not comply with plaintiffs’ demands for discovery, plaintiffs will suffer undue prejudice and hardship if they are compelled to proceed to trial without the information requested in their discovery demands. Accordingly, the court grants plaintiffs’ application to compel third-party defendant Highbury Concrete Inc. to respond to plaintiffs’ demands for discovery.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion is granted; and it is further

ORDERED that plaintiffs’ unopposed motion for a protective order is granted to the extent that the New York City Office of Corporation Counsel is directed to mark “Yes” for item #5(c) for the proposed Preliminary Conference Order so that the Preliminary Conference Order can be submitted for approval to this court; and it is further

ORDERED that the parties shall submit the proposed Preliminary Conference Order with “Yes” marked for item #5(c) within ten (10) days of this court’s order by submitting the same to the court at sfc-part5@nycourts.gov and sfc-part5-clerk@nycourts.gov with all parties copied; and it is further

ORDERED that third-party defendant Highbury Concrete Inc. is directed to respond to plaintiffs’ demands for discovery within thirty (30) days, and no later than May 24, 2024; and it is further

ORDERED that the motion appearance date of April 30, 2024 at 9:30 AM is vacated; and it is further

ORDERED that the parties shall appear for a conference before the court in the Differentiated Case Management on Tuesday May 28, 2024 at 2:00 PM in Room 103 of the courthouse at 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

4/24/2024  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

CHECK IF APPROPRIATE: