Munoz v Jamaica Bldrs.
2024 NY Slip Op 35015(U)
December 20, 2024
Supreme Court, Queens County
Docket Number: Index No. 717477/2020
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

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BONIFACIO MUNOZ,

Plaintiff,

-against-

JAMAICA BUILDERS, 153 JAMAICA HOUSING DEVELOPMENT FUND CORPORATION, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, NEW DESTINY HOUSING CORPORATION, JAMAICA OWNER LLC, BFC PARTNERS DEVELOPMENT LLC, SMJ JAMAICA LLC, BFC ASSOCIATES, LLC, RISE DEVELOPMENT PARTNERS, LLC, RISE CONCRETE LLC, and CONCRETE SUPERSTRUCTURES, INC.,

Defendants.

---X

RISE DEVELOPMENT PARTNERS, LLC and RISE CONCRETE LLC,

Third-Party Plaintiffs,

-against-

ARO CONSTRUCTION GROUP, INC.,

Third-Party Defendant.

---X

JAMAICA BUILDERS, LLC,

Second Third-Party Plaintiff,

-against-

CITY SAFETY COMPLIANCE CORP.,

Index No.:717477/2020

Motion
Date: October 21, 2024

Motion Cal. No.:

Motion Sequence No.: 5

Second Third-Party Defendant.

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The following efile papers numbered 263-273, 279-301 submitted and considered on this motion by Plaintiff Bonifacio Munoz seeking an Order directing that counsel for defendants Marc Sloane, Esq. appear before this Court for oral argument and a hearing and determination of this motion before this Court on all relief sought by plaintiff herein; sanctioning counsel Marc Sloane, Esq. for his continued and repeated efforts to delay the prosecution of this matter and engage in frivolous litigation practices; sanction counsel Marc Sloane, Esq. for threats made to counsel in this matter showing his efforts to simply delay the prosecution of this matter without any good faith basis; and for a protective order pursuant to CPLR 3103 striking defendants' improper, unreasonable and prejudicial Notice to Admit dated April 18, 2024; ordering counsel for defendants including Marc Sloane, Esq. and any attorney affiliated with the firm Mintzer Sarowitz Zeris Ledva & Meyers, LLP to cease and desist from engaging in frivolous conduct and attempts to delay this litigation.

Plaintiff's motion is **granted** to the extent that Plaintiff is granted a protective Order under CPLR 3103 striking Defendants' Notice to Admit dated April 18, 2024, as the Court finds that the service of the Notice to Admit after the filing of a Note of Issue, as well as the contents therein constituted frivolous conduct as defined under 22 NYCRR Part 130.

	Papers Numbered
Notice of Motion-Affidavits-Exhibits..................	EF 263-273
Affirmation in Opposition-Affidavits-Exhibits.....	EF 279-294
Reply Affirmation-Affidavits-Exhibits................	EF 295-301

Upon the foregoing papers this matter is determined as follows:

Relevant Procedural History

Plaintiff seeks an Order directing that counsel for defendants Marc Sloane, Esq. appear before this Court for oral argument and a hearing and determination of this motion before this Court on all relief sought by plaintiff herein; sanctioning counsel Marc Sloane, Esq. for his continued and repeated efforts to delay the prosecution of this matter and engage in frivolous litigation practices; sanction counsel Marc Sloane, Esq. for threats made to counsel in this matter showing his efforts to simply delay the prosecution of this matter without any good faith basis; and for a protective order pursuant to CPLR 3103 striking defendants' improper, unreasonable and prejudicial Notice to Admit dated April 18, 2024; ordering counsel for defendants including Marc Sloane, Esq. and any attorney affiliated with the firm Mintzer Sarowitz Zeris Ledva & Meyers, LLP to cease and desist from

engaging in frivolous conduct and attempts to delay this litigation. Plaintiff filed a Note of Issue on September 28, 2023. Thereafter, Defendants filed a Notice of Removal on October 20, 2023. On December 6, 2023, the Federal Court filed a Remand Order with the State Court (*see* EF 254) and Defendants Rise filed a Notice of Bankruptcy. On April 25, 2024, the bankruptcy Stay was lifted (*see* EF 261.)

Defendants' Notice to Admit dated on April 18, 2024, served after the Note of Issue was filed, demanded that Plaintiff either admit or deny the truth of the following pursuant to CPLR 3123 within twenty (20) days:

1. Plaintiff admits to using counterfeit documents to obtain employment with ARO CONSTRUCTION GROUP INC.

2. Plaintiff admits Plaintiff and/or funding entities did not advance any monies to medical providers for medical care.

3. Plaintiff admits Plaintiff and/or funding entities did not advance any monies to non-lawyer "runners"regarding this subject matter.

4. Plaintiff admits to using a fraudulent social security number.

5. Plaintiff admits that the accident given rise to the within lawsuit is not a staged accident.

6. Plaintiff admits that he was not coerced into staging the accident giving rise to the within lawsuit.

7. Plaintiff admits that the Plaintiff's OSHA 30 Card was legally obtained by a certified OSHA instructor and is not fraudulent or counterfeit.

8. Plaintiff admits that during the course of this litigation that no fraudulent activities were conducted by Plaintiff or by anyone acting on Plaintiff's behalf.

9. Plaintiff admits to filing for and collecting Workers' Compensation benefits as a result of the accident giving rise to the within lawsuit.

10. Plaintiff admits to having a bank account in his name for the depositing of Workers' Compensation benefits via ACH transfers.

11. Plaintiff admits that he is receiving Workers' Compensation indemnity wage benefits and is not allowing other people or entities to take a portion or all of the wage benefits paid.

12. Plaintiff admits that Workers' Compensation fee schedule is exclusively paying for all medical providers.

13. Plaintiff admits that Plaintiff's medical treaters/providers have not been advanced any litigation funding loan bonuses or other forms of compensation.

14. Plaintiff admits and acknowledges that any monies paid in excess of the New York State Workers' Compensation fee schedule is a felony to the medical provider who seek monies in excess of the New York State Workers' Compensation fee schedule.

15. Plaintiff admits that he has never used an alias or other name other than the one used herein.

16. Plaintiff admits that his medical providers or representatives have used undue pressure to undergo any surgical procedure.

17. Plaintiff admits that any advance monies taken via a litigation loan funding company have not been paid to a cartel, coyote (person who smuggles one over the United States border) or gang for Plaintiff or another person.

Plaintiff contends that the Notice to Admit, served well after the filing of the Note of Issue contains 17 paragraphs of frivolous, outrageous, harassing and inappropriate demands, and not subject to a notice to admit. The demands are also consistent with issues raised on the previous motion decided by Hon. Tracy Catapano-Fox for which Mr. Sloane was sanctioned, and additionally includes information known to Mr. Sloane from testimony adduced at Plaintiff's deposition, or which could have been addressed.

In opposition, an affirmation was submitted by Courtney A. Bihn, Esq. (hereinafter "Bihn") dated June 10, 2024. Bihn stated that the motion was an effort to hide the fact that this case is fraudulent, and that neither Mr. Sloane or the members of Mintzer Sarowitz Zeris & Willis, LLP have engaged in any frivolous litigation practice, and were zealously representing its clients by attempting to obtain discoverable evidence. Sanctions were not warranted because this is a fraudulent case. Defendants believe that Plaintiff's accident and/or medical procedures are fraudulent: According to Bihn, Plaintiff's alleged medical procedures involved in this case were performed by medical providers which are defendants currently named in an action in the United States District Court for the Eastern District of New York, involving the Racketeer Influenced and Corrupt Organizations Act (RICO). Also according to Bihn, video surveillance obtained depicts Plaintiff has full range of motion and is not being truthful about the injuries he sustained in this case. An affidavit of Harry Reimer regarding the video footage was attached. An affidavit of Dr. Michael Sileo was also annexed. Dr. Sileo attested to reviewing the medical records and surveillance materials in the case and in his opinion, there was a question on whether or not Plaintiff underwent surgery based upon his full range of motion in the video. An affidavit of Dr. Andrew Bazos, orthopedic surgeon, was also attached. Dr. Bazos reviewed the surveillance videos which in his opinion, did not show any signs of physical limitations relating to Plaintiff's right knee, cervical spine, left shoulder or lumbar spine. He also reviewed Plaintiff's medical records, and in his opinion, Plaintiff's injuries had resolved. Other IME reports were also annexed. Defendants also

annexed an affidavit of non-party witness Arturo Garay (hereinafter "Garay") to demonstrate that Plaintiff's testimony as to how his accident occurred differed from Garay's recollection. Further, Defendants contend that Plaintiff has lied about his identity and produced several false documents to the Court. Defendants attached an affidavit of their investigator, Harry Reimer of Power Investigations, who performed an investigation of the Plaintiff's information. The Social Security number Plaintiff used on his Worker's Compensation form belongs to a deceased person named "Jose Zavala" and not the Plaintiff. Plaintiff testified that he bought a fake social security card at a store in Queens. A search of the New York State Department of Motor Vehicles does not reveal the existence of a person named "Bonifacio Munoz" but did reveal a "Bonadio Munoz" with the same date of birth as Plaintiff's. The address of "Bonadio Munoz" was a BP gas station, and when Mr. Reimer went to the gas station, no one had heard of Plaintiff, therefore, no one knows where Plaintiff lives or who he really is. According to Defendants, Plaintiff admitted at his deposition that he is an illegal immigrant, and has not at any time presented any documents disclosing his actual name. Defendants contend that they are entitled to discovery requested. They are entitled to know the identity of the person suing them, there are no frivolous discovery requests, and that they are in the process of appealing Court Orders. Defendants are not trying to delay the action but are instead attempting to defend this case.

Further, there is no basis to support the imposition of sanctions under NYCRR §130-1.1. After the Note of Issue was filed, Plaintiff provided another Notice of Medical Exchange alleging that he had a new procedure performed on December 1, 2023. Therefore, the April 18, 2023 Notice to Admit is proper and Plaintiff should provide a response. Defendants claimed "Mr. Munoz already admitted to using counterfeit documents to obtain employment with ARO Construction Group. He admitted to using a fraudulent social security number under oath. While the deposition testimony states this, the defendants are entitled to request the information in a Notice to Admit to obtain a definitive answer on the issue. Admission made during deposition is not conclusive and may be explained away, but admission in response to a notice to admit, unless amended or withdrawn by court order, is conclusive. *Groeger v. Col-Les Orthopedic Assocs., P.C.*, 136 A.D.2d 952, 524 N.Y.S.2d 950 (1988)." Defendants believe that Plaintiff's accident was staged, and Plaintiff continues to make false claims in this case. There is such strong evidence of fraud in this case, and the Notice to Admit is proper.

In response, Plaintiff essentially repeated the arguments made in the supporting papers. Defense counsel has made frivolous contentions in both Federal and State Court. Mr. Sloane continues to litigate this matter in bad faith.

DISCUSSION

CPLR 3123(a) allows a party to serve upon another party a notice to admit as to the truth of any matters of fact, which the party requesting the admission reasonably believes there will not be any substantial dispute at the trial, and which are within the knowledge of the other party. A notice to admit can be used to eliminate issues in litigation which are not really in dispute at trial (*see Falkowitz v Kings Highway Hosp*., 43 AD2d 696 [2d Dept 1973]; *see also Kalabovic v Fort Place*

Co-op., Inc., 159 AD2d 609 [2d Dept 1990]; *Villa v New York City Housing Auth*., 107 AD2d 619 [1st Dept 1985]). This Court finds that the Defendants' Notice to Admit is not only untimely, it requests information which will be in dispute at trial (*see Williams v City of New York*, 125 AD3d 767 [2d Dept 2015]; *Jet One Group Inc. v Halcyon Jet Holdings Inc*., 111 AD3d 890 [2d Dept 2013]). and contains harassing and inappropriate demands (*DeSilva by DeSilva v Rosenberg*, 236 AD2d 508 [2d Dept 1997]). Therefore, Plaintiff is granted a protective order under CPLR §3103. Pursuant to CPLR § 3103 the Court may at any time on its own initiative, make a protective order, denying or limiting the use of any disclosure device (*see Kapon v Koch*, 23 NY3d 32 [2014]; *Diaz v City of New York,* 117 AD3d 777 [2d Dept 2014]; *Jet One Group, Inc. v Halcyon Jet Holdings, Inc*., 111 AD3d 890 [2d Dept 2013]).

Addressing next the relief sought by Defendants in their cross-motion, 22 NYCRR 130-1.1, titled "Costs; sanctions" states the following:

> (a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart. This Part shall not apply to town or village courts, to proceedings in a small claims part of any court, or to proceedings in the Family Court commenced under article 3, 7 or 8 of the Family Court Act.
>
> (b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both. Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm, corporation, government agency, prosecutor's office, legal aid society or public defender's office with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm or corporation with which the attorney is associated.
>
> (c) For purposes of this Part, conduct is frivolous if:
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
> (3) it asserts material factual statements that are false.

> Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.
> (d) An award of costs or the imposition of sanctions may be made either upon motion in compliance with CPLR 2214 or 2215 or upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

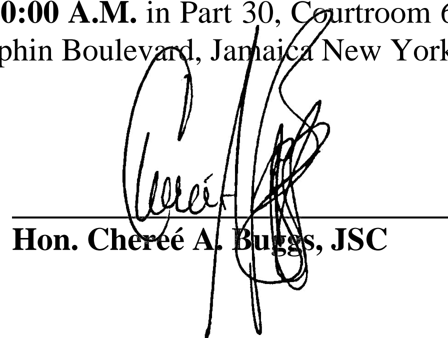
Plaintiff argued that Mr. Sloane has engaged in frivolous conduct both in the State Court and Federal Court. Plaintiff also submitted emails sent by Mr. Sloane to demonstrate his threats and baseless accusations which were similar to those emails cited in Plaintiff's previous motion which lead to Mr. Sloane being sanctioned. Plaintiff requests a hearing on costs with having to file this motion since, although advised this would be the course of action taken if Defendants did not withdraw the Notice fo Admit, Defendants failed to do so. Upon the Court's consideration of the foregoing papers it is

ORDERED, that Plaintiff's motion is **granted** to the extent that Plaintiff is granted a protective Order under CPLR 3103 striking Defendants' Notice to Admit dated April 18, 2024; and it is further

ORDERED, that the Court finds that the service of the Notice to Admit after the filing of a Note of Issue, as well as the contents therein constituted frivolous conduct as defined under 22 NYCRR Part 130; and it is further

ORDERED, that this matter shall be set down for a hearing pursuant to 22 NYCRR 130-1.1 to be held on **TUESDAY, JANUARY 28, 2025 at 10:00 A.M.** in Part 30, Courtroom 67, of the Supreme Court, Queens County, located at 88-11 Sutphin Boulevard, Jamaica New York 11435.

Date: December 20, 2024



Hon. Chereé A. Buggs, JSC