

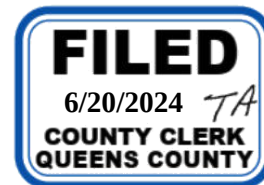
Lopez v City of New York
2024 NY Slip Op 35391(U)
June 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 710112/2023
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

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

IAS PART 30



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ANGEL ROBERTO LAMAR LOPEZ,

Index No.:710112/2023

Plaintiff,

Motion

Date: April 29, 2024

-against-

Motion Cal. No.: 16

THE CITY OF NEW YORK, 86-02 FOREST
PARKWAY, LLC and GAVRIL PAUL,

Motion Sequence No.: 1

Defendants.

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The following efile papers numbered 14-20, 23-29 submitted and considered on this motion by defendant 86-02 Forest Parkway, LLC (hereinafter “LLC”) seeking an Order pursuant to Civil Practice Law and Rules (CPLR) § 3126 dismissing Plaintiff Angel Roberto Lamar Lopez’ (hereinafter “Lamar”) complaint for failure to comply with all outstanding discovery demands, including its demand for a bill of particulars and various combined demands dated July 13, 2023; or in the alternative, pursuant to CPLR 3124 compelling plaintiff to comply with all outstanding discovery requests and demands, including its demand for a bill of particulars and various discovery demands dated July 13, 2023, and imposing conditional sanctions in the event of continuing unresponsiveness and non-compliance.

Papers
Numbered

Notice of Motion-Affidavits-Exhibits.....	EF 14-20
Affirmation in Opposition-Affidavits-Exhibits.....	EF 23-27
Reply Affirmation-Affidavits-Exhibits.....	EF 28-29

Lamar commenced this action on May 16, 2023 to recover for a trip and fall accident which allegedly occurred on June 18, 2022 on a sidewalk abutting real property known as 86-02 Forest Parkway and 85-66 Forest Parkway, County of Queens, State of New York. Lamar sued City, LLC and Gavril Paul asserting that they were each responsible for maintaining the sidewalk, which he described in the complaint as uneven, broken and cracked. City and LLC have appeared in this matter. An affidavit of service for defendant Gavril Paul has not been efiled by Lamar.

LLC filed this motion on February 6, 2024 seeking relief under CPLR 3124 and 3126. In the affirmation of good faith, LLC stated that prior to making this motion, a good faith letter was sent to Lamar's counsel on October 2, 2023 and a call was made to Lamar's counsel on December 5, 2023. In the interim, Hon. Mojgan C. Lancman issued a Preliminary Conference Order dated February 28, 2024, which directs disclosure by the parties within certain time frames, and the Order states that all issues related to outstanding discovery is to be brought before the Compliance Conference Part, not the assigned Justice. Depositions of all parties must take place on June 20, 2024. A bill of particulars, medical records and authorizations were to be provided within 30 days of the date of the Order. A Compliance Conference in this case is scheduled on July 29, 2024.

In opposition to the motion, Lamar asserted that he had provided responses to LLC's discovery demands and authorizations on March 18, 2024, thus, the motion is moot. In reply, LLC stated that the discovery was still not complete since Lamar's authorizations were still insufficient because they were limited from the date of the accident, not the entire medical record. LLC also sought additional authorizations which were not previously demanded in relation to Lamar's bill of particulars and allegations set forth therein related to the accident exacerbating a pre-existing condition.

DISCUSSION

CPLR §3101 titled "Scope of Disclosure" states the following in relevant part:

- "(a) Generally. There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:
- (1) a party, or the officer, director, member, agent or employee of a party;
 - (2) a person who possessed a cause of action or defense asserted in the action;
 - (3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he or she will not be able to attend the trial, or a person authorized to practice medicine, dentistry or podiatry who has provided medical, dental or podiatric care or diagnosis to the party demanding disclosure, or who has been retained by such party as an expert witness; and
 - (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.
- (b) Privileged matter. Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable.
- (c) Attorney's work product. The work product of an attorney shall not be obtainable.
- (d) Trial preparation... ."

Pursuant to CPLR 3124 titled “Failure to disclose; motion to compel disclosure”, the following is stated:

“If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response. “

CPLR § 3126 titled “Penalties for refusal to comply with order or to disclose” states the following:

“If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party’s control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or
2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.”

The Court finds that as a Preliminary Conference Order has been issued by the Court, directing discovery, Lamar is on notice of the authorizations which must be exchanged so that his medical records can be obtained. Further, any outstanding discovery issues can be addressed by the parties at the upcoming Compliance Conference on July 29, 2024. To the extent that LLC seeks additional discovery in its reply papers related to pre-existing injuries which are alleged to be

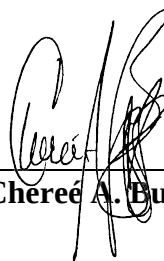
exacerbated by the accident, LLC should explore same at the upcoming deposition scheduled on June 20, 2024, and serve a post-deposition demand for same. Therefore, it is

ORDERED, that the motion is granted to the extent that the parties are directed to comply with the Preliminary Conference Order dated February 28, 2024; and it is further

ORDERED, that all issues related to outstanding discovery shall be addressed at the upcoming Compliance Conference scheduled on July 29, 2024; and it is further

ORDERED, the failure of any party to comply with Court Orders shall result in sanctions, including preclusion or the striking of the pleading upon further application to this Court. This Court will not tolerate any further delays in moving this case forward.

Date: June 18, 2024



Hon. Chereé A. Buggs, JSC

