

Campos v Gramercy 1860, LLC

2025 NY Slip Op 30844(U)

March 13, 2025

Supreme Court, New York County

Docket Number: Index No. 155351/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS
Justice

PART 57M

-----X
DENIS CAMPOS,
Plaintiff,

INDEX NO. 155351/2020
MOTION DATE 01/10/2025
MOTION SEQ. NO. 004

- v -

GRAMERCY 1860, LLC, DHC CONTRACTING INC., FIVE
HORSEMEN CONSTRUCTION INC.,
Defendant.

**DECISION + ORDER ON
MOTION**

-----X
DHC CONTRACTING INC.
Plaintiff,

Third-Party
Index No. 595444/2022

-against-

PERFORMANCE MASTER, INC.
Defendant.

-----X
FIVE HORSEMEN CONSTRUCTION INC.
Plaintiff,

Second Third-Party
Index No. 595820/2023

-against-

PERFORMANCE MASTER INC.
Defendant.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 102

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

This action was commenced by plaintiff to recover for personal injuries sustained as a result of an accident that occurred on June 12, 2020. Plaintiff was in the course of his employment as a construction worker when he was caused to fall from a ladder.

Defendant Gramercy 1860, LLC, failed to appear in this action, and a Default Judgment was granted against it on June 23, 2021.

On July 19, 2021, Plaintiff filed a second action against the Defendants, DHC Contracting Inc. (DHC) and Five Horsemen Construction Inc. (Five Horsemen), which was assigned Index Number 156758/2021. On January 6, 2022, the second action under Index Number 156758/2021 was consolidated with the instant action.

On May 31, 2022, the Defendant DHC., filed a Third-Party Summons and Verified Complaint against the Third-Party Defendant, Performance Master, Inc. Third-Party Defendant failed to appear in this action, and a Default Judgment was granted against it on November 21, 2022.

On September 7, 2023, the Defendant Five Horsemen. filed a Second Third Party Summons and Verified Complaint against the Second Third-Party Defendant, Performance Master, Inc., which has failed to appear or answer.

Plaintiff appeared for deposition on September 9, 2024, at which time plaintiff testified to having contacted a friend named Dario Hernandez after the accident. Defendant, Five Horsemen served a post-ebt demand on September 13, 2024, and the Defendant, DHC served a post-ebt discovery demand on September 17, 2024, both of which demanded, among other things, that the plaintiff provide the last known address and telephone number for Dario Hernandez.

A status conference order was issued by Justice Kraus on December 20, 2024, directing plaintiff to provide the telephone number of Dario Hernandez by January 21, 2025.

On January 31, 2025, plaintiff moved pursuant to CPLR §2221 to vacate the portion of the December 20, 2024, status conference order directing the disclosure of Dario Hernandez' phone number. Plaintiff's counsel argues that at the time of the conference counsel was unaware

that Dario Hernandez was an employee of plaintiff's counsel's law firm and asserts that any conversation between plaintiff and Mr. Hernandez is confidential pursuant to Attorney-Client privilege. Defendant Five Horsemen filed opposition and on March 3, 2024, the motion was fully submitted.

Under CPLR §2221(a), a trial court has its own orders. Unlike a motion for leave to reargue under CPLR §2221(d), a motion to vacate is not subject to a time limitation and does not need to be based upon a showing that the trial court overlooked specific matters of fact or law. CPLR §5015 similarly permits "[t]he court which rendered a judgment or order" to "relieve a party from it upon such terms as may be just...upon the ground of...lack of jurisdiction to render the judgment or order."

Trial courts are vested with broad discretion to issue appropriate orders to limit or grant discovery (*Venables v Rovegno*, 195 AD3d 876, 879 [2nd Dept 2021]). "[T]his discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind. (*id.*; see also *Cascardo v Cascardo*, 136 AD3d 729, 729-730 [2nd Dept 2016]). The supervision of disclosure and the settling of reasonable terms and conditions therefore rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed (*Berkowitz v 29 Woodmere Blvd. owners' Inc.*, 135 AD3d 798, 799 [2nd Dept 2016]).

CPLR4503(a)(1) provides as follows:

Confidential communication privileged. Unless the client waives the privilege, an attorney or his or her employee, or any person who obtains without the knowledge of the client evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment, shall not disclose, or be allowed to disclose such communication, nor shall the client be compelled to disclose such communication, in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency or by the

legislature or any committee or body thereof. Evidence of any such communication obtained by any such person, and evidence resulting therefrom, shall not be disclosed by any state, municipal or local governmental agency or by the legislature or any committee or body thereof. The relationship of an attorney and client shall exist between a professional service corporation organized under article fifteen of the business corporation law to practice as an attorney and counselor-atlaw and the clients to whom it renders legal services.

After reviewing the portion of the transcript where plaintiff testified to calling Dario Hernandez and referred to him only as "... a friend ...a close friend that I trust." The court finds that the communications between Mr. Hernandez and plaintiff are not subject to the Attorney Client privilege. Plaintiff testified that he called Mr. Hernandez so as to not to upset his wife. When asked if there was any other reason besides calling to tell Mr. Hernandez that he was in accident, plaintiff responded "No, no, just for that." Clearly the communication was not a "confidential communication made between the attorney or his or her employee and the client in the course of professional employment". Plaintiff was not calling Mr. Hernandez for any legal advice. Further, Plaintiff's counsel raised no objection during the deposition, nor did plaintiff object during the discovery conference with the court. The fact alone that Mr. Hernandez works in plaintiff's law firm and that plaintiff was involved in a previous accident in which said law firm represented him is not sufficient to invoke Attorney- Client Privilege.

WHEREFORE, it is hereby

ORDERED plaintiff's motion to vacate that portion of the order directing plaintiff to provide the contact information for Dario Hernandez is denied; and it is further

ORDERED plaintiff is to provide the contact information for Dario Hernandez within 10 days of the date of this order; and it is further

ORDERED that, within 20 days from entry of this order, defendant Five Horsemen shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/suptctmanh).

This constitutes the decision and order of the court.



SABRINA KRAUS, J.S.C.

3/13/2025
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	
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