

Moonah v County of Westchester
2025 NY Slip Op 35318(U)
September 11, 2025
Supreme Court, Westchester County
Docket Number: Index No. 65726/2023
Judge: Walter Rivera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
NEZAM MOONAH,

Plaintiff,

-against-

THE COUNTY OF WESTCHESTER, THE CITY
OF MOUNT VERNON, SPACE AGE ALARMS, INC.,
and TRUSTEE JOHNSON CLAUDE

Defendants.
-----x

Rivera, J.

The following papers numbered 1- 4 were read and considered in connection with plaintiff Nezam Moonah’s motion to compel discovery from defendant Trustee Johnson Claude (hereinafter “Trustee”), and a supplemental discovery response from defendant City of Mount Vernon (hereinafter “City”), pursuant to Civil Practice Law and Rules 3124 and 3126, and to extend the parties’ time to file a trial readiness stipulation, pursuant to Uniform Rules for Trial Courts (22 NYCRR) 202.21 (d) (Motion Seq. No. 1):

PAPERS	NUMBER
Plaintiff’s Notice of Motion (Motion Seq. No. 1)/Attorney’s Affirmation in Support/Affirmation of Good Faith/Exhibits A-1 (NYSCEF Doc. Nos. 60-71)	1
Defendant City of Mount Vernon’s Affirmation in Opposition/Exhibit A (NYSCEF Doc. Nos. 72-73)	2
Defendant Trustee Johnson Claude’s Affirmation in Opposition (NYSCEF Doc. No. 74)	3
Attorney Affirmation in Reply (NYSCEF Doc. No. 75)	4

Upon reading the foregoing papers, the within motion is determined as follows:

Plaintiff commenced the instant action on August 21, 2023 by the filing of a summons and complaint seeking to recover monetary damages for personal injuries allegedly sustained on December 15, 2022, when plaintiff tripped and fell on a sidewalk abutting 222-224 North 5th Avenue in the City of Mount Vernon, New York. (NYSCEF Doc. Nos. 1-2.)

Following a compliance conference on January 21, 2025, the parties were instructed to, among other things, confer in good faith regarding all discovery issues. This Court's Compliance Conference Order, dated January 23, 2025, stated explicitly that counsel should not wait until a compliance conference to advise the court of any issues concerning discovery and counsel were admonished to review the procedures set forth in the Westchester Supreme Court Civil Case Management Rules. A compliance conference was scheduled for April 14, 2025. (NYSCEF Doc. No. 51.)

As noted in the subsequent Final Compliance Conference Order, dated April 16, 2025, neither plaintiff nor defendant City appeared for the compliance conference on April 14, 2025. (NYSCEF Doc. No. 57.) Instead, the parties submitted a stipulation between plaintiff, defendant City, and defendant Trustee, agreeing to complete discovery by May 5, 2025 and to file a trial readiness stipulation no later than May 15, 2025. The Final Compliance Conference Order stressed that the Court would indulge no further adjournment of the May 15, 2025 date to file a trial readiness stipulation. Instead of abiding by the terms of this Court's Final Compliance Conference Order and the Case Management Rules, plaintiff filed the instant discovery motion on May 15, 2025.

The Westchester County Supreme Court Civil Case Management Rules (hereinafter, Case Management Rules) provide that “[n]o discovery-related motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed and e-filed until a pre-motion conference has been requested and held.”

By way of background, defendant City filed its response to plaintiff's notice for discovery and inspection on May 7, 2025. This was two days after it was due, but eight days in advance of the May 15, 2025 deadline imposed by the Court for the filing of the trial readiness stipulation. Plaintiff argues that defendant City's discovery response is both defective and incomplete. Plaintiff demanded records from defendant City dating back 10 years and in response, defendant City provided an affidavit from John Nuculovic, Deputy Commissioner of the Department of Public Works for the City of Mount Vernon, sworn to on February 28, 2025,

confirming that a search was conducted looking back five years. (NYSCEF Doc. No. 59).

Defendant City contends that a five-year look-back has been the practice of defendant City and accepted as custom and practice by the Court.¹

Nonetheless, in his affirmation in opposition, defendant Trustee's counsel agreed to have another search conducted responsive to plaintiff's demands and to exchange the results of said search, or alternatively, to provide a "Jackson Affidavit" by a date set by the Court. (NYSCEF Doc. No. 74, ¶ 8.)

CPLR 3101 (a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution...of an action." "The phrase 'material and necessary' should be interpreted liberally, and the test is one of usefulness and reason" (*10ICO, LLC v Sand Land Corp.*, 189 AD3d 942, 943 [2d Dept 2020]). "However, the principle of full disclosure does not give a party the right to uncontrolled and unfettered disclosure" (*Board of Mgrs. of Fishkill Woods Condominium v Gottlieb*, 184 AD3d 792, 794 [2d Dept 2020] [internal citations omitted]). "[C]ompeting interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party" (*Strauss v Valkenburg*, 227 AD3d 1118, 1119 [2d Dept 2024] [internal citations omitted]).

"It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims, and unsubstantiated bare allegations of relevancy are insufficient to establish the factual predicate regarding relevancy" (*Crazytown Furniture v Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept 1989] [internal citations omitted]). "The supervision of discovery is generally left to the trial court's broad discretion" (*D'Alessandro v Nassau Health Care Corp.*, 137 AD3d 1195, 1196 [2d Dept 2016] [internal citations and brackets omitted]). "A motion to compel responses to discovery demands...is properly denied where the demands...seek information that is irrelevant, overly broad, or burdensome" (*JPMorgan Chase Bank, N.A. v Levenson*, 149 AD3d 1053, 1054 [2d Dept 2017];

¹ According to the Retention and Disposition Schedule for New York Local Government Records (LGS-1), records of notification of unsafe, dangerous, or defective conditions of a street and sidewalk are required to be retained for six years. Records covering routine maintenance and repair activities and pavement markings for highways or other transportation structures are also required to be retained for six years.

see *Orange & Rockland Utils., Inc. v County of Rockland*, 206 AD3d 668, 668-669 [2d Dept 2022]).

Here, plaintiff's counsel contends that plaintiff's deposition testimony establishes that plaintiff tripped and fell on a "curb" that, due to its color, was indistinguishable from the roadway, and that this is a condition the City "may have created through its own conduct, whether by removing prior markings, resurfacing without repainting, or a host of other possibilities." (NYSCEF Doc. No. 61, ¶ 27.)² The Court finds that the alleged relevance of the additional discovery sought is based on speculative and conclusory arguments. Thus, plaintiff has failed to sustain their burden of demonstrating that the discovery sought is relevant to their claims. (see *101CO, LLC, id.* at 944; *Crazytown Furniture, id.* at 421.)

Plaintiff also alleges that the affidavit provided by defendant City is insufficient and requests that the Court compel a detailed searcher's affidavit. The Court has reviewed the affidavit in question and finds that the search was a thorough one and that it was conducted in a good faith effort to provide these necessary records to plaintiff. (see *Jackson v. City of New York*, 185 A.D.2d 768, 770 [1st Dept 1992].) Accordingly, the branch of the motion seeking to compel disclosure of records beyond five years or to strike defendant City's answer and compel a "Jackson Affidavit" from defendant City is denied.

Plaintiff also seeks to compel discovery from defendant Trustee or strike their answer. Although late, defendant Trustee provided the records plaintiff requested, dating from 2017, on June 9, 2025. (NYSCEF Doc. No. 76.) As previously noted, defendant Trustee's counsel has also agreed to conduct another search, or alternatively, to provide a "Jackson Affidavit". Accordingly, plaintiff's motion is granted solely to the extent of directing defendant Trustee to provide a "Jackson Affidavit" no later than September 30, 2025.

Plaintiff's motion to extend the parties' time to file a trial readiness stipulation is granted and a trial readiness stipulation shall be filed to NYSCEF on or before October 3, 2025. The Court notes that such extension is necessitated by the parties' failure to adhere to the previous court-imposed deadlines. The parties are cautioned that the making of frivolous motions (including the filing of a discovery-related motion without a pre-motion conference) and/or the

² Plaintiff alleges in his complaint that the accident occurred when he was "lawfully walking abutting the premises known as 222-224 North 5th Avenue, Mt. Vernon, NY 10550, wherein he was caused to lose his footing and trip and fall and be violently precipitated to the ground, as a result of the ... dangerous condition and/or trap (i.e. sidewalks uneven, broken, depressed, cracked, patchy, lifted, unsafe and in disrepair)." (NYSCEF Doc. No. 2, ¶ 164.)

failure to abide by court orders may result in the imposition of costs or sanctions on the offending party (*see* 22 NYCRR § 202.20 [e]).

All other arguments raised on the motion and evidence submitted by the parties in connection therewith have been considered by the court, notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

ORDERED, that the motion to compel supplemental discovery from defendant City is denied;

ORDERED, that the motion to compel discovery from defendant Trustee is granted to the extent that said defendant shall provide a “Jackson Affidavit” no later than September 30, 2025;

ORDERED, that the parties’ time to file a trial readiness stipulation is extended to October 3, 2025.

Dated: White Plains, New York
September 11, 2025

ENTER:



HON. WALTER RIVERA, J.S.C.