

Djavodov v Wisconsin Leasing LP

2026 NY Slip Op 31708(U)

March 26, 2026

Supreme Court, Kings County

Docket Number: Index No. 524374/2019

Judge: Carolyn Walker-Diallo

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 36, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse at 320 Jay Street, Brooklyn, New York on the 26th day of March, 2026

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

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SHERZOD DJAVODOV,

Plaintiff,

Index No.: 524374/2019

- against -

DECISION/ORDER

WISCONSIN LEASING LIMITED PARTNERSHIP
and KINGS & QUEENS MAINTENANCE SERVICES,

Defendants.

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Recitation, as required by CPLR 2219 (a), of the papers considered in the review of these Motions:

Papers

Numbered

Defendants' First Motion in Limine, and Exhibits	NYSCEF Doc. Nos. 76-80
Plaintiff's Motion in Limine, and Exhibits	NYSCEF Doc. Nos. 87-91
Defendants' Second Motion in Limine, and Exhibits ¹	NYSCEF Doc. No. 93
Plaintiff's Affirmation in Opposition to Defendants' First Motion	NYSCEF Doc. No. 100
Defendants' Affirmation in Opposition to Plaintiff's Motion	NYSCEF Doc. No. 101
Plaintiff's Affirmation in Opposition to Defendants' Second Motion, and Exhibits	NYSCEF Doc. Nos. 102-104
Defendants' Reply Affirmation to Defendants' First Motion	NYSCEF Doc. No. 106
Defendants' Reply Affirmation to Defendants' Second Motion	NYSCEF Doc. No. 107
Plaintiff's Reply Affirmation to Plaintiff's Motion	NYSCEF Doc. No. 109 ²

¹ This Court, in its infinite discretion, allowed Defendants to file a second motion in limine in this action on the eve of trial, and set a briefing schedule for the parties to fully brief the motion while also balancing the needs of the court to timely start the assigned trial. Defendants have not provided a reason for why the request for relief sought in the second motion was not included in its first motion in limine. This information has been known to Defendants since at least the examinations before trial were taken in 2022, yet Defendants waited until March 24, 2026 to raise an objection.

² Plaintiff's Reply Affirmation to Plaintiff's Motion filed as NYSCEF Doc. No. 108 is superseded by the revised filing as NYSCEF Doc. No. 109 per the correspondence filed (NYSCEF Doc. No. 110).

Upon the parties' motions in limine, which are consolidated for purposes of disposition, the Decision/Order on these motions is as follows:

Plaintiff moves for an order precluding Defendants' experts Kevin Toosi and Peter Chen from testifying at trial on the basis of late disclosure and insufficient expertise to testify as experts about the evidence at issue. Second, Defendants move for an order precluding and excluding Dr. Joseph Weinstein from testifying at trial on the basis of the Workers' Compensation Board ("Board") and Schenectady County Supreme Court decisions. Third, Defendants separately move for an order precluding submission of evidence and testimony regarding a prior incident with a medicine cabinet that occurred a few months before the accident at issue. For the foregoing reasons, Plaintiff's motion to preclude is GRANTED and Defendants' motions to preclude are DENIED.

I. PLAINTIFF'S MOTION

A. DR. KEVIN TOOSI AND PETER CHEN ARE PRECLUDED FROM TESTIFYING.

Defendants exchanged its initial expert witness disclosures of Peter Chen and Dr. Kevin Toosi on March 13, 2026, mere days before jury selection was scheduled to begin on March 19, 2026. *See* Notice of Expert Witness Exchange dated March 13, 2026, NYSCEF Doc. Nos. 65-66. Plaintiff thereafter filed a rejection of the exchanges that same day. *See* Notice of Rejection dated March 13, 2026, NYSCEF Doc. No. 67. Defendants had a responsibility to exchange expert witness information within the timeframe set forth in 22 NYCRR 202.16 (g) and have not done so, nor have they shown good cause for the untimely disclosures. Although Defendants argue that such disclosures are of no surprise to Plaintiff as they concern "issues central to this case from inception," that is irrelevant when the disclosure is exchanged days before trial. *See* Defendants' Opposition to Plaintiff's Motion to Preclude dated March 25, 2026, NYSCEF Doc. No. 101 at 12.

Further, such disclosure only days before trial is heavily prejudicial to Plaintiff's trial preparations and retention of rebuttal experts. *See* Plaintiff's Motion in Limine dated March 22, 2026, NYSCEF Doc. No. 87, ¶43. Thus, Plaintiff's motion to preclude Dr. Kevin Toosi and Peter Chan from testifying is GRANTED.

II. DEFENDANTS' MOTIONS

A. DR. JOSEPH WEINSTEIN IS NOT PRECLUDED FROM TESTIFYING.

Defendants contend that Dr. Joseph Weinstein, Plaintiff's treating doctor, should be precluded from testifying in this matter due to findings by the Workers' Compensation Board and Schenectady County Supreme Court that his treatments are not in line with accepted standards of care and were not medically necessary, among other findings. Pursuant to the Board's findings, Dr. Weinstein has been barred from performing Workers' Compensation related treatments and independent medical examinations. *See* Workers' Compensation Board Determination dated April 2, 2025, NYSCEF Doc. No. 77. In an Article 78 proceeding, the Supreme Court affirmed the administrative Board's findings. *See* Decision and Order of the Hon. Thomas D. Buchanan dated March 5, 2026, NYSCEF Doc. No. 78. Plaintiff asserts that Dr. Weinstein should not be precluded from testifying based upon these unrelated matters as Plaintiff's treating doctor with personal knowledge of his care. Additionally, Plaintiff correctly notes that Defendants' reliance on *Hamsch v. New York City Transit Auth.*, 63 N.Y.2d 723 (1984), is misplaced. That case involved testimony by the treating doctor not "based on facts in the record or personally known to the witness," which is not alleged here. *Id.* at 725.

Dr. Weinstein will not be precluded from testifying. The findings by the Board and Supreme Court are not binding on this Court. Further, there is no information presented that the outcome of the Board's findings or Supreme Court affirmance led to the relinquishment, limitation

and/or revocation of Dr. Weinstein's licensing privileges. Finally, such evidence goes to Dr. Weinstein's credibility, which is for the jury to decide. *See Muhammad v. Right Price Gen. Constr. Corp.*, 82 Misc. 3d 1218(A) (Sup. Ct. Kings Co. 2024), citing *People v. Scarola*, 71 N.Y.2d 769, 777 (1988) ("the trial court has discretion in determining whether the probative value of such admissible evidence is substantially 'outweighed by the danger it will unfairly prejudice the other side or mislead the jury'"). Defendants can present such evidence to the jury to impeach Dr. Weinstein's credibility on cross-examination as they are the finders of fact in this matter. Therefore, Defendants' motion to preclude Dr. Weinstein's testimony is DENIED.

Finally, though Plaintiff requests that this Court preclude Defendants from introducing the aforementioned evidence in its opposition papers, such relief is not properly before the Court as no motion for this affirmative relief has been sought. *See* Affirmation in Opposition of Catherine J. Fiorentino, Esq. dated March 25, 2026, NYSCEF Doc. No. 100, ¶¶28-39. As such, Plaintiff's request for relief must be DENIED.³

B. EVIDENCE AND TESTIMONY REGARDING A PRIOR INCIDENT WITH A MEDICINE CABINET IS NOT PRECLUDED.

Defendants further contend that evidence and testimony regarding an incident involving a medicine cabinet in the month before the accident at issue should be precluded as irrelevant,

³ The Court declines to exercise its discretion to entertain Plaintiff's untimely and improper application to preclude introduction of the Board findings and Supreme Court affirmance of same that is first raised in Plaintiff's opposition papers to Defendants' first motion in limine filed on March 25, 2026. *See* CPLR 2215; *Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 64-65 (2d Dep't 2013) ("Given the language of CPLR 2215, and the contexts in which it is applicable, the most reasonable interpretation of the statute is that a party seeking relief in connection with another party's motion is, as a general rule, required to do so by way of a cross motion, at least to have a right that the request be determined on the merits. Otherwise, a party who seeks relief by way of a notice of cross motion would be in a position less favorable than that of a party who merely makes the request without a notice of cross motion: the party who makes a formal cross motion would be required to comply with the notice and service requirements and deadlines imposed by the statute, but a party seeking relief merely by requesting it would enjoy greater flexibility. Nonetheless, courts retain discretion to entertain requests for affirmative relief that do not meet the requirements of CPLR 2215. Litigants, however, must be cognizant of an important distinction between the two situations: a party in compliance with CPLR 2215 is entitled to have its cross motion considered; a party not in compliance with the statute must hope that the court opts, in the exercise of its discretion, to entertain the request").

prejudicial, and confusing to the jury, as that incident is separate from the accident at issue and not causally connected. In opposition, Plaintiff's provides the examination before trial transcripts of Luis Diaz, Defendants' superintendent, taken on November 8 and 11, 2022. *See Examination Before Trial Transcripts of Luis Diaz Taken November 8 and 11, 2022*, NYSCEF Doc. No. 103. In these transcripts, Mr. Diaz is questioned about the medicine cabinet having fallen off the bathroom wall in April 2019, and the cause of the leaking. *Id.* at 30-33. Plaintiff contends that this provided notice to Defendants of the condition that allegedly caused the accident at issue here. The Court agrees. Defendants' contention that the wall damage is unrelated to the ceiling damage at issue and any related water damage causation, is again an issue for the jury to consider and determine. Accordingly, Defendants' motion to preclude evidence and testimony regarding an incident involving the medicine cabinet is DENIED.

The remaining contentions of the parties have been considered. Any relief requested by the parties and not addressed is DENIED.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn Walker-Diallo, J.S.C.