

James v Holt Constr. Corp.

2020 NY Slip Op 35714(U)

September 8, 2020

Supreme Court, Queens County

Docket Number: Index No. 704487/2018

Judge: Chereé A. Buggs

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FILED

**9/9/2020
09:56 AM**

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

**COUNTY CLERK
QUEENS COUNTY**

Present: HONORABLE CHEREÉ A. BUGGS

IAS PART 30

Justice

-----X
ANDREA JAMES,

Index No.: 704487/2018

Plaintiff,

Motion
Date: August 12, 2020

-against-

Motion Cal. No.: 21

Motion Sequence No:1

HOLT CONSTRUCTION CORP., LAFAYETTE
GLASS and ARCHITECTURAL ENTRANCE
SYSTEMS INC.,

Defendants.

-----X
HOLT CONSTRUCTION CORP.,

Third -Party Plaintiff,

-against-

LAFAYETTE GLASS and ARCHITECTURAL
ENTRANCE SYSTEMS INC.,

Third-Party Defendants.

-----X

The following papers numbered 37-60, 62-64 submitted and considered on this motion by defendant Holt Construction Corp. seeking an Order pursuant to Civil Practice Law and Rules (“CPLR”) 3401 and 22 NYCRR 202.21(e) vacating plaintiff’s Note of Issue, requiring that plaintiff provide complete responses to Holt’s Notice for Discovery and Inspection dated September 12, 2019; compelling the depositions of 2 additional witnesses from defendant/third-party defendant Architectural Entrance Systems, and for such other and further relief as the Court seems just and proper.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 37-47
Affirmation in Opposition-Affidavits-Exhibits.....	EF 48-53, 54-60
Reply Affirmation-Affidavits-Exhibits.....	EF 62-64

This personal injury litigation arises from an alleged trip and fall accident which occurred on May 1, 2017 at or about the doorway between the first class dining area and the Admirals Club inside Terminal A of John F. Kennedy Airport located in Jamaica, New York, County of Queens. It has been alleged by plaintiff Andrea James that a tripping hazard in the form of a metal bar was at the entrance area and/or doorway between the first class dining area and the Admirals Club which was allowed to remain on the floor and plaintiff tripped over same. The action was commenced by plaintiff on or about March 26, 2018 with the filing of a summons and verified complaint against Holt Construction Corp. (hereinafter “Holt”) only. Thereafter, on or about August 16, 2018, Holt filed a verified answer and served various discovery demands. On or about August 24, 2018, Holt initiated a Third-party action against Third-party defendants Lafayette Glass (hereinafter “Lafayette”) and Architectural Entrance Systems Inc. (hereinafter “Architectural”). Both Lafayette and Architectural have filed answers in the third-party action. Plaintiff moved to amend her complaint to add Lafayette and Architectural as direct defendants on or about November 9, 2018. Plaintiff filed a Note of Issue and Certificate of Readiness on January 9, 2020.

Now, Holt is seeking an Order pursuant to Civil Practice Law and Rules (“CPLR”) 3401 and 22 NYCRR 202.21(e) vacating plaintiff’s Note of Issue, requiring that plaintiff provide complete responses to Holt’s Notice for Discovery and Inspection dated September 12, 2019, compelling the depositions of 2 additional witnesses from Architectural, and for such other and further relief as the Court seems just and proper. Holt seeks outstanding discovery from plaintiff, including authorizations. Further Holt seeks to depose two employees of Architectural, Patrick Thompson and Wade Takahata. A witness for Architectural was produced on December 5, 2019, Mr. Donald Falzon, (hereinafter “Falzon”) its principal. Falzon’s deposition transcript was annexed to the motion. Falzon testified that he was not present at the site at the time of the accident. He testified that the work done on behalf of Architectural at the site was performed by two technicians employed by Architectural, Patrick Thompson and Wade Takahata, and that they actually worked in the area of the accident prior to the accident.

Architectural submitted partial opposition to this motion, arguing that the branch of the motion seeking to compel additional depositions of its employees should be denied because it produced a witness for a deposition, Falzon, the owner and President, who was fully knowledgeable of its contractual relations with the other parties in this matter and of the work performed at the worksite. Thus Holt failed to demonstrate that Falzon who had already been deposed lacked insufficient knowledge or was otherwise inadequate and the parties sought for an additional deposition possessed information material and necessary to the prosecution of this matter (*see Sladowski-Casolaro v World Championship Wrestling, Inc.*, 47 AD3d 803 [2d Dept 2008]). Plaintiff opposed the motion, arguing that she had provided all outstanding discovery.

In reply Holt stated that the depositions of witnesses from Architectural were material and

necessary because Architectural produced a witness who was not present on the date that the installation a sliding glass door was performed, which was April 26, 2017, and also, the witness Falzon derived his testimony from the witnesses sought to be deposed. Holt maintained that plaintiff claimed to trip over a piece of door frame which was installed by Architectural, and that information regarding same came be elicited from the witnesses sought who were actually present and working at the subject location prior to plaintiff's accident. Also, plaintiff failed to provide all authorizations it sought. She failed to provide an authorization for her primary care physician. Thus, under these circumstances, discovery is not complete.

LEGAL ANALYSIS

CPLR 3101(a) sets forth the criterion for disclosure under the CPLR, requiring "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is to be liberally interpreted to "require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Allen v. Crowell Collier Publishing Co.*, 21 NY2d 403, 406 [1969]). The test to determine if the information sought is material and necessary is one of usefulness and reason. (*Id.*) The principle of full disclosure does not, however, give a party the right to uncontrolled and unfettered disclosure (*see Peluso v. Red Rose Rest., Inc.*, 78 AD3d 802, 803 [2d Dept. 2010]). Matters relating to disclosure lie within the broad discretion of the trial court which is in the best position to determine what is material and necessary (*see Buxbaum v. Castro*, 82 AD3d 925 [2d Dept. 2011]).

Falzon's testimony of material facts surrounding the actual work performed by Architectural was based upon conversations he had with his employees, Patrick Thompson and Wade Takahata. The Court finds that conducting their depositions would be appropriate. Additionally, although plaintiff provided most of the outstanding discovery it is not clear at this juncture if she exchanged an authorization for her primary care physician. Therefore, it is

ORDERED, that defendant's motion is granted to the extent that plaintiff is directed to provide complete responses to Holt's discovery demand dated September 12, 2019 as outlined in this motion, including a HIPAA compliant authorization for her primary care physician within thirty (30) days of this Order, to the extent not already exchanged; and it is further

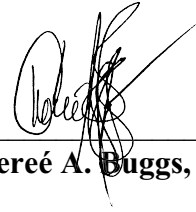
ORDERED, that the witnesses sought by Holt from Arch, Patrick Thompson and Wade Takahata, shall appear for depositions within forty-five (45) days from the date of this Order served with Notice of Entry. The depositions may be conducted virtually due to the Covid-19 pandemic; and it is further

ORDERED, all other requests for relief not specifically addressed are denied; and it is further

ORDERED, that the failure of any party to comply with this Order may result in sanctions, including preclusion at the time of Trial.

The foregoing constitutes the decision and Order of this Court.

Dated: September 8, 2020



Hon. Chereé A. Buggs, JSC

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**COUNTY CLERK
QUEENS COUNTY**