

Griffin v MTA Bus Co.
2017 NY Slip Op 31256(U)
June 8, 2017
Supreme Court, New York County
Docket Number: 157098/2013
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 21

COREEN GRIFFIN

INDEX NO. 157098/2013

- v -

MOT. DATE

MTA BUS COMPANY et al.

MOT. SEQ. NO. 005 and 006

The following papers were read on this motion to/for consolidate (005) and strike (006)

Motion sequence number 005 - Notice of Motion — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits

ECFS DOC No(s). 138-139

ECFS DOC No(s). 140

Motion sequence number 006 - Notice of Motion — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits

ECFS DOC No(s). 142-159

ECFS DOC No(s). 161-162, 163-170,
171-173, 174-182

In this action, plaintiff seeks to recover for personal injuries she sustained as a result of a motor vehicle accident. In motion sequence number 005, defendants Veronica J. Vera and Johann Compoverde (collectively "Vero & Compoverde") move for an order transferring an action pending in New York City Civil Court, Queens County entitled Geico General Insurance Company as Subrogee of George P. Dileto v. MTA Bus Company et al., Index Number 19477/2013 (Action No. 2) and consolidating Action No. 2 under this action. Plaintiff opposes the motion to consolidate.

In motion sequence number 006, plaintiff moves for an order striking Vero & Compoverde's answer for failure to comply with discovery, or alternatively permitting plaintiff to file note of issue and precluding Vero & Compoverde at the time of trial, or alternatively compelling Vero & Compoverde's deposition, as well as the deposition of George Dileto as well as directing defendnats MTA Bus Company and Troy Morgan ("MTA") to produce records responsive to plaintiff's post-EBT demands. MTA joins that portion of plaintiff's motion seeking Vero & Campoverde's depositions. The motions are hereby consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

At the outset, the motion to consolidate must be granted. There is no dispute that this action and Action No. 2 arise from the same underlying motor vehicle accident. While plaintiff claims that defendants have inexcusably delayed bringing the instant motion until three years after these actions were commenced, the court does not find this delay to warrant denial of the motion to consolidate. Both actions involve common issues of law and fact and therefore a single trial is appropriate. Plaintiff concedes that

Dated: 6-8-17

[Signature]
HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [] GRANTED [] DENIED [X] GRANTED IN PART [] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST
[] FIDUCIARY APPOINTMENT [] REFERENCE

discovery is not complete. The court will, however, expedite all remaining discovery to alleviate the delay issues raised by plaintiff.

The court now turns to the motion to strike. Plaintiff's motion, to the extent that she seeks Vero and Compoverde's depositions, is granted at the outset.

As for the discovery sought from the MTA, plaintiff seeks maintenance and repair records for five years preceding the accident and one year subsequent. MTA objected to the request but did provide maintenance and repair records for six months prior to the accident. Plaintiff also seeks whether there was an event recorder for the bus and bus scheduling information. MTA is still investigating whether there was a bus recorder and reserves its right to respond. In a supplemental response, MTA maintains that the subject bus does not have an event recorder and provided a paddle report, bus schedule and recap report.

Finally, MTA objected to plaintiff's demand for Troy Morgan's post-accident drug & alcohol screening results, disciplinary hearing information and personnel records as well as an authorization for Morgan's cell phone records for thirty minutes before and after the accident.

Plaintiff is not entitled to post-accident repair records. However, the court will direct MTA to provide maintenance and repair records for the bus for the two year period prior to the accident as this period of time is not overbroad while five years would be unreasonable.

With respect to the disciplinary and personnel records, that request is denied. There is no dispute here that Morgan was working as a bus operator within the scope of his employment with MTA Bus Company. These records are irrelevant to plaintiff's negligence claim under a theory of respondeat superior.

The court does find that Morgan's potential use of a cell phone while operating the subject bus is material and relevant and his cell phone records for the period thirty minutes before and through thirty minutes after the accident, should be provided. Therefore, MTA is directed to provide an authorization for Morgan's cellphone records.

Plaintiff's motion is otherwise denied. None of the defendant's arguments or legal positions are patently meritless and they have not engaged in the type of conduct warranting sanctions.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that motion sequence number 005, to transfer and consolidate, is granted; and it is further

ORDERED that the action entitled *Geico General Insurance Company as Subrogee of George P. Dileto v. MTA Bus Company et al.*, Index Number 19477/2013 (Action No. 2) is hereby transferred from the Civil Court of the City of New York, Queens County, to this Court; and it is further

ORDERED that movant is directed to serve a certified copy of this order upon the Clerk of the Civil Court, who shall, upon such service and the payment of any fees, transfer to this court all of the papers heretofore filed in said action; and it is further

ORDERED that the said Civil Action shall be consolidated with this action under the index number of this action; and it is further

ORDERED that the caption of the consolidated action shall be the following:

COREEN GRIFFIN, Plaintiff, INDEX NO. 157098/2013
Action No. 1
- v -

MTA BUS COMPANY, TROY C. MORGAN, NEW YORK CITY
TRANSIT AUTHORITY, MTA REGIONAL BUS OPERATIONS,
THE CITY OF NEW YORK, VERONICA J. VERA, JOHANN
CAMPOVERDE and GEORGE DILIETO,
Defendants.

GEICO GENERLA INSURANCE COMPANY as subrogee of Action No. 2
GEORGE P. DILETO,
Plaintiff,
- v -

MTA BUS COMPANY, TROY MORGAN, VERONICA J. VERA
and JOHANN CAMPOVERDE,
Defendants.

And it is further **ORDERED** that the pleadings heretofore filed in the said Civil Court action and in this action shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant shall serve a copy of this order with notice of entry on the County Clerk (Room 141B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that motion sequence number 006, to strike, etc., is granted to the following extent:

- [1] EBT of Defendant Vera to be held on July 20, 2017 at 10am or another mutually agreeable date and time; and
- [2] EBT of Defendant Campoverde to be held on July 27, 2017 at 10am or another mutually agreeable date and time; and
- [3] EBT of Defendant Dilieto to be held on August 3, 2017 at 10am or another mutually agreeable date and time; and
- [4] defendants MTA Bus Company and Troy C. Morgan are directed to provide [a] maintenance and repair records for the subject bus for two years prior to the accident, to the extent not already provided; and [b] an authorization for Morgan's cellphone records for the time-period thirty minutes before through and including thirty minutes after the underlying accident.

