

Gjonbalaj v 317 W. 89th St. LLC

2011 NY Slip Op 33411(U)

November 30, 2011

Supreme Court, New York County

Docket Number: 109920/2008

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Saliann Scarpulla
Justice

PART 19

Index Number : 109920/2008
GJONBALAJ, ALI
vs.
317 WEST 89TH STREET
SEQUENCE NUMBER : 006
SUBPOENA DUCES TECUM

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 006
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

decided per the memorandum decision dated 11/30/2011
which disposes of motion sequence(s) no.

FILED

DEC 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/30/11

Saliann Scarpulla
SALIANN SCARPULLA ^{J.S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

-----X
ALI GJONBALAJ, as Administrator of the Estate of ALEN
GJONBALAJ deceased,

Plaintiffs,

Index No.: 109920/2008

-against-

THE 317 WEST 89TH STREET LLC C/O SAMSON
MANAGEMENT CONDOMINIUM, THE 317 WEST
89TH CONDOMINIUM AND FOUR STAR GENERAL
CLEANING CORP.

DECISION AND ORDER

Defendants.

FILED

-----X
317 WEST 89TH STREET LLC, C/O SAMSON
MANAGEMENT AND THE 317 WEST 89TH STREET
CONDOMINIUM,

DEC 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

Third-Party Plaintiffs,

Index No.: 590421/2009

-against-

FOUR STAR GENERAL CLEANING CORP.

Third Party Defendants.

-----X

For Plaintiff:
Daniel Davidovic, Esq.
2509 Avenue U
Brooklyn, NY 11229

For Defendants/Third-Party Plaintiffs 317 West 89th LLC
C/O Samson Management and the 317 W 89th Street Condomium
Malapero & Prisco LLP
295 Madison Ave.
New York, NY 10017

Papers considered in review of this motion to dismiss:

Notice of Motion 1
Aff in Support 2
Aff in Opposition 3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries and wrongful death, plaintiff Ali Gjonbalaj, as Administrator of the Estate of Alen Gjonbalaj, deceased (“plaintiff”), moves for an issuance of subpoenas on non-parties Erik Eastbrook (“Eastbrook”) of the New York City Police Department (NYPD) and Aaron Rosen, M.D. (“Rosen”), of the Office of Chief Medical Examiner for the City of New York.

On July 28, 2007, Alen Gjombalaj (“Gjombalaj”) was allegedly murdered in his apartment located in the 317 West 89th Street condominium. Gjombalaj was the condominium’s superintendant. Ali Gjonbalaj, the Administrator of his estate, commenced this action in July 2008, alleging that defendants negligently operated, maintained and controlled the building, thus permitting an unidentified intruder to gain access to the apartment.

Plaintiff now moves for an issuance of subpoenas on non-parties Eastbrook and Rosen. On August 17, 2011, plaintiffs withdrew their motion as to Rosen. However, they still seek Easterbrook’s deposition, as well as documents from Easterbrook relating to the Gjombalaj murder investigation. Plaintiff asserts that Easterbrook could testify to the condition of the situs of the accident at the time he entered the apartment.

[* 4]

In opposition, defendants 317 West 89th Street LLC and 317 West 89th Street LLC c/o Samson Management (“defendants”) argue that the Court should deny plaintiff’s motion because the proposed subpoenas are facially defective for failing to explain why the discovery from Eastbrook is necessary. Defendants further argue that plaintiffs have not established adequate special circumstances to require the deposition and production of documents from Easterbrook. Defendants also maintain that the requested disclosure would impair the criminal investigation into Gjombalaj’s murder.

Discussion

Disclosure may be sought from a non-party “upon notice stating the circumstances or reasons such disclosure is sought or required.” CPLR § 3101(a)(4). Further, there must be “adequate special circumstances” to support the disclosure. *Brady v. Ottaway Newspapers, Inc.*, 63 N.Y.2d 1031, 1032 (1984). “Whether or not adequate special circumstances have been shown to support discovery against a nonparty is generally a determination to be made upon a review of the facts, and rests within the sound discretion of the court to which application is made.” *Brady*, 63 N.Y.2d at 1032.

Here, plaintiff has not articulated adequate special circumstances to support discovery from non-party Easterbrook. Plaintiff does not indicate that it has made any efforts to obtain the information from another source, nor has plaintiff asserted that attempting to do so would be fruitless. *See Cirale v. 80 Pine Street Corp.*, 35 N.Y.2d 113, 114 (1974) (holding that a wrongful death plaintiff did not show adequate special

circumstances to support non-party discovery from a government agency where plaintiff did not "indicate what endeavors, if any, were undertaken to obtain" independent evidence).¹

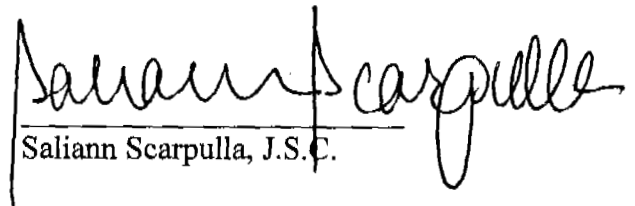
In accordance with the foregoing, it is

ORDERED that the motion seeking a subpoena and a subpoena duces tecum by plaintiff Ali Gjonbalaj, as Administrator of the Estate of Alen Gjonbalaj, deceased, is denied.

This constitutes the decision and order of the Court.

Dated: New York, New York
November 30, 2011

ENTER:


Saliann Scarpulla, J.S.C.

FILED

DEC 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

¹Because plaintiffs have not articulated adequate special circumstances to warrant discovery from Easterbrook, this Court does not decide whether the subpoenas are facially defective or whether the information seeking discovery from Easterbrook would impair an ongoing criminal investigation.