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| Sanchez v Alexander's Rego Shopping Ctr. |
| 2016 NY Slip Op 30714(U) |
| March 10, 2016 |
| Supreme Court, Queens County |
| Docket Number: 700876/13 |
| Judge: Denis J. Butler |
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ORIGINAL

Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Present: Hon. Denis J. Butler
Justice

IAS PART 12

RUBEN SANCHEZ,

Plaintiff,

- against -

Index No. 700876/13

Motion Date: 12/17/15

Motion Cal. No.: 131

Seq. #: 5

ALEXANDER'S REGO SHOPPING CENTER, INC., ALEXANDER'S REGO PARK CENTER, INC., ALEXANDER'S REGO PARK II, INC., ALEXANDER'S REGO PARK III, INC., ALEXANDER'S INC., REGO II BORROWER, LLC, VORNADO REALTY TRUST, SCHINDLER ELEVATOR, CORP., and NOUVEAU ELEVATOR INDUSTRIES, INC.,

Defendants.

FILED
MAR 18 2016
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 27 read on this motion by defendants, Alexander's Rego Shopping Center, Inc., Alexander's Rego Park Center, Inc., Alexander's Rego Park II, Inc., Alexander's Rego Park III, Inc., Alexander's Inc., and Rego II Borrower, LLC ("Alexander's"), for an order dismissing plaintiff's complaint upon his failure to appear for a court-ordered deposition and comply with defendant Alexander's discovery demands, or, in the alternative, for an order, inter alia, compelling plaintiff to appear for a deposition and independent medical examinations or be precluded from offering testimony or evidence at the time of trial; cross-motion by defendant, Nouveau Elevator Industries, Inc. (Nouveau), for an order dismissing plaintiff's complaint on the grounds that plaintiff has failed to appear for a court-ordered deposition, or, in the alternative, for an order precluding plaintiff from offering any testimony or evidence at trial in support of plaintiff's claims upon his failure to provide a bill of particulars responsive to Nouveau's demand, or, in the alternative, for an order compelling plaintiff to appear for a deposition and independent medical examinations by a date certain; cross-motion by plaintiff for an order striking defendants' answers upon

their failure to provide discovery, or, in the alternative, for an order directing defendants to complete discovery.

| | <u>Papers Numbered</u> |
|--|----------------------------|
| Notice of Motion - Affidavits - Exhibits | 1 - 5 |
| Ans. Affs. - Exhibits (Nouveau) | 6 - 8 |
| Reply Affs. | 9 - 10 |
| Notice of CM - Affidavits - Exhibits (Nouveau) | 11 - 14 |
| Notice of CM - Affidavits - Exhibits (plaintiff) | 15 - 18 |
| Ans. Affs. (Schindler) | 19 - 20 |
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| Reply Affs. (Nouveau) | 26 - 27 |

Upon the papers filed in support of the within motion and cross-motions and the papers filed in opposition thereto, the within motions are determined as follows:

The within action arises out of an April 12, 2012 incident in which plaintiff alleges that while employed by Bed Bath & Beyond at their 96-05 Queens Boulevard location in the Rego Center Shopping Mall, he was caused to sustain personal injuries when he was allegedly struck in the head by the freight elevator at said premises.

The within motions come before this court as the result of the parties' inability to conduct discovery.

By way of background, this court has issued a preliminary conference order dated June 19, 2013, a compliance conference order, dated December 23, 2013, a so-ordered stipulation (Florio, CA-R), dated July 24, 2014, and a further so-ordered stipulation (Finnegan, CA-R), dated October 23, 2014, all of which established dates for, *inter alia*, the taking of depositions and the conducting of independent medical examinations of the plaintiff.¹

As pointed out by the Court of Appeals, “[I]tigation cannot be conducted efficiently if deadlines are not taken seriously, and we make clear again, as we have several times before, that disregard of deadlines should not and will not be tolerated (*citations omitted*)” (*Andrea v Arnone, Hedin, Casker, Kennedy and Drake, Architects and Landscape Architects*,

¹ The records of this court also indicate that plaintiff had filed a note of issue in this matter on May 30, 2014, which was subsequently vacated by the so-ordered stipulation dated October 23, 2014.

P.C., 5 NY3d 514 [2005]). Indeed, “the trial court’s responsibility remains the same as it always has been: to fashion an order consistent with its obligation to bring discovery to an end as quickly as possible” (*Lopez v Imperial Delivery*, 282 AD2d 190, 198-199 [2d Dept. 2001]).

Pursuant to the foregoing, and with the understanding that “[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Kihl v Pfeffer*, 94 NY2d 118, 124 [1999]), it is hereby

ORDERED that plaintiff’s complaint shall be dismissed, without further need of application to this court, in the event he fails to appear for a deposition at 10:00 AM on Monday, April 18, 2016, at the offices of a court reporting service located on Sutphin Boulevard, Jamaica, New York; and it is further

ORDERED that defendant Alexander’s shall produce a representative for purposes of a deposition at 10:00 AM on Monday, May 2, 2016, at the offices of a court reporting service located on Sutphin Boulevard, Jamaica, New York; and it is further

ORDERED that defendant Schindler Elevator, Corp. shall produce a representative for purposes of a deposition at 10:00 AM on Monday, May 9, 2016, at the offices of a court reporting service located on Sutphin Boulevard, Jamaica, New York; and it is further

ORDERED that defendant Nouveau shall produce a representative for purposes of a deposition at 10:00 AM on Monday, May 16, 2016, at the offices of a court reporting service located on Sutphin Boulevard, Jamaica, New York; and it is further

ORDERED that there shall be no adjournment of the deposition dates set forth above in light of the repeated failure to comply with the orders set forth above; and it is further

ORDERED that to the extent counsel herein have any conflicts with the dates set forth above, they are hereby directed to secure the services of an attorney to appear on their behalf; and it is further

ORDERED that the failure of a party to appear and question an appearing witness shall result in that party waiving any right they may have to said deponent’s testimony; and it is further

ORDERED that any demands for disclosure arising out of said depositions shall be served within ten (10) days of the completion of the respective deposition, and shall be responded to within thirty (30) days of receipt; and it is further

ORDERED that defendants shall designate physician(s) to conduct any desired

independent medical examination(s) of the plaintiff by no later than April 30, 2016, with said independent medical examination(s) to occur on or before, but no later than, June 15, 2016, with any reports prepared as the result of said independent medical examination(s) to be served upon plaintiff's counsel by no later than August 1, 2016; and it is further

ORDERED that the failure of plaintiff to appear for scheduled independent medical examination(s) shall result in plaintiff being precluded from presenting any evidence at trial with regard to injuries, without further need of application to this court; and it is further

ORDERED that any remaining discovery set forth in the so-ordered stipulations above-cited shall be provided within thirty (30) days of service of the within order with notice of entry, to the extent not already provided; and it is further

ORDERED that all other discovery that may be presently due and owing to the parties herein, but which was not specifically set forth in the papers submitted in support of the present applications, is hereby deemed waived; and it is further

ORDERED that upon the completion of *all* discovery, the parties shall so stipulate and present said stipulation to the clerk of the Trial Scheduling Part (TSP) for an order permitting the filing of a new note of issue and the scheduling of this matter for a pre-trial conference in the TSP; and it is further

ORDERED that all other applications not specifically addressed herein are denied.

Parenthetically, it should be noted that while defendants Alexander's and Nouveau have alleged the existence of various items of outstanding discovery, plaintiff's papers have attached numerous discovery responses and the reply papers provided by said defendants do not allege that their demands have not been complied with or that the responses provided are insufficient.

The foregoing constitutes the decision and order of this court.

Date: March 10, 2016



J.S.C.

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COUNTY CLERK
QUEENS COUNTY