

Santiago v Trefz

2016 NY Slip Op 31365(U)

June 10, 2016

Supreme Court, Bronx County

Docket Number: 303982/13

Judge: Betty Owen Stinson

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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BIENVENIDO SANTIAGO,

DECISION AND ORDER

Plaintiff(s), Index No: 303982/13

- against -

CHRISTIAN CARL TREFZ, INDIVIDUALLY,
CHRISTIAN CARL TREFZ D/B/A BROADWAY TWO
COMPANY (MCDONALD'S # 28538), TREFZ
CORPORATION, GM 5201 BROADWAY LLC, 5201
BROADWAY ASSOCIATES, INC., AND 5201
BROADWAY ASSOCIATES, LLC.,

Defendant(s).

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Stinson, J.

In this action for alleged personal injuries arising from the alleged negligent maintenance of the public sidewalk, defendants move for an order, *inter alia*, striking the complaint pursuant CPLR § 3126 on grounds that plaintiff has failed to provide discovery. Specifically, defendants assert that plaintiff has failed to provide responses to and comply with a legion of discovery demands served upon him and has also failed to provide discovery ordered within the Preliminary Conference Order dated June 12, 2014. Plaintiff opposes the instant motion asserting that it has, in fact, responded to each discovery demand served upon him by defendant; interposing proper objections thereto.

For the reasons that follow hereinafter, defendants' motion is denied.

Plaintiff's complaint alleges the following: On November 9, 2012, plaintiff tripped and fell while traversing the a defective sidewalk located in front of 5201 Broadway, New York, NY (5201). It is alleged that defendants owned, maintained, and controlled 5201 and the abutting sidewalk and were negligent in failing to keep it reasonably safe. As a result of the foregoing, plaintiff alleges he sustained injury. Specifically, as per his bill of particulars, plaintiff alleges that he injured both knees, requiring surgery.

Defendants' motion must be denied because as argued by plaintiff, defendants have failed to comply with 22 NYCRR 202.7.

The Uniform Rules for the New York Trial Courts states that "with respect to a motion relating to disclosure" (22 NYCRR 202.7), it shall not be filed absent "an affirmation that [moving] counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion" (*id*). It is well settled that the failure to file the aforementioned affirmation warrants denial of any motion seeking disclosure or sanctions related thereto (*Hernandez v City of New York*, 100 AD3d 433, 434 [1st Dept 2012]; *Molyneaux v City of New York*, 64 AD3d 406, 407 [1st Dept 2009]; *Vasquez v G.A.P.L.W. Realty, Inc.*, 236 AD2d 311, 312 [1st Dept 1997]). Moreover, denial of a motion

seeking disclosure is also warranted when the affirmation of good faith submitted nevertheless fails to indicate that the proponent of disclosure actually conferred with counsel for the party from whom discovery is sought (*Gonzalez v Intl. Bus. Machines Corp.*, 236 AD2d 363 [2d Dept 1997] ["Furthermore, the court did not err in summarily denying the appellant's motion to strike the complaint since counsel for the appellant failed to confer with counsel for the plaintiffs in a good faith effort to resolve the issues raised by the motion."]; *Koelbl v Harvey*, 176 AD2d 1040, 1040 [3d Dept 1991] ["Contrary to the position taken by defendants that it was not their obligation to make a further request for a bill of particulars or to serve reminders upon plaintiffs, they were required to communicate with plaintiffs in a good-faith effort to obtain the requested particulars without filing a motion with Supreme Court." (internal quotation marks omitted)]).

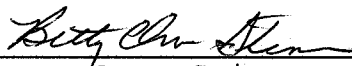
Here, while defendants submit an affirmation of good faith, the affirmation itself precludes consideration of the instant motion insofar as it indicates that defendants only wrote to plaintiff on three separate occasions seeking compliance with discovery demands, allegedly to no avail. Thus, the affirmation fails to indicate that defendants actually engaged in discussions with plaintiff in an effort to resolve the instant discovery dispute. It is hereby

ORDERED that plaintiff serve a copy of this Decision and Order

with Notice of Entry upon defendants within thirty (30) days hereof.

This constitutes this Court's decision and Order.

Dated : June 10, 2016
Bronx, New York



Betty Owen Stinson, JSC