Rohan v Kew Realty LLC
2018 NY Slip Op 31892(U)
July 16, 2018
Supreme Court, Queens County
Docket Number: 703042/12
Judge: Darrell L. Gavrin

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE DARRELL L. GAVRIN** IA PART 27
Justice

PATRICK JAMES ROHAN & PATRICK BRYAN ROHAN,	Index No. 703042/12
Plaintiffs,	Motion Date March 15, 2018
- against-	
KEW REALTY LLC,	Motion Cal. No. 120
Defendant.	Motion Seq. No. 3

The following papers read on this motion by defendant, Kew Realty LLC, for an order granting summary judgment dismissing the complaint in its entirety. Plaintiffs' cross-move for an order striking defendant's answer, pursuant to CPLR 3124 and 3126, and in the alternative resolving the issue of notice and causation in the plaintiffs' favor and precluding defendant from disputing the same at trial; imposing sanctions against defendant for frivolous motion practice, pursuant to CPLR 8303(a) and 22 NYCRR §130-1.1; and denying defendant's motion for summary judgment.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits.....	EF 34-51
Notice of Cross Motion - Affirmation - Exhibits.....	EF 53-70
Opposing Affirmation - Exhibits.....	EF 73-81
Reply Affirmation.....	EF 71-72
Reply Affirmation.....	EF 82-83

Upon the foregoing papers, the motion and cross motion are determined as follows:

Plaintiffs, Patrick James Rohan and his son Patrick Bryan Rohan, are the tenants of apartment 2E located at 147-19 75th Road, Flushing, New York. Defendant, Kew Realty LLC, is the owner of the subject multi-family building, in which said apartment is located.

Plaintiffs allege that they sustained personal injuries as a result of a fire that started in the kitchen of their apartment on December 10, 2011, at approximately 2:00 a.m. Plaintiff, Patrick James Rohan, commenced an action against Kew Realty LLC on December 3, 2012 under Index Number 703042/2012 to recover damages for personal injuries sustained as a result of the fire. Kew Realty LLC served an answer on January 28, 2013, and interposed twelve affirmative

defenses. Plaintiff, Patrick Bryan Rohan, commenced an action against Kew Realty LLC on December 3, 2012, under Index Number 703044/2012 to recover damages for personal injuries sustained as a result of the fire. Kew Realty LLC served an answer on January 28, 2013, and interposed twelve affirmative defenses.

Each plaintiff alleges in his complaint that the defendant was negligent in its ownership, operation, management, maintenance, inspection, control, repair, installation and repair of the premises, including but not limited to all electric and gas lines and wiring; defective circuit breakers; improperly wired appliances, devices; failed to provide adequate, proper and sufficient smoke detectors, fire safety equipment and devices; and failed to provide adequate and proper walls, floors, ceilings, doors, fire exits, materials, airways, shafts, vents/ventilation and heating.

Plaintiffs assert that the defendant caused the apartment unit to be improperly wired and in a manner that failed to comply with the New York City Building Code. It is asserted that the fire occurred because an electrical line was overloaded, and had the circuit breaker worked properly, there would have been no fire; had the defendant provided sufficient, proper and adequate electrical lines, including a dedicated line for high electrical usage devices such as a refrigerator, the remaining line would not have been overloaded and there would have been no fire; and had the defendant provided enough electrical outlets, there would have been no fire. Plaintiffs also assert that the defendant failed to provide and/or install in the apartment a smoke/carbon monoxide detector as required by Multiple Dwelling Law §68(2)(a) and the Administrative Code of the City of New York § 27-2045.

The Rohan's separate actions were consolidated for all purposes under Index No. 703042/2012 pursuant to a so-ordered stipulation dated April 23, 2014. The court issued as compliance conference order dated October 30, 2014, directing plaintiffs to serve and file a note of issue on or before April 3, 2015; directing plaintiff to be deposed on January 9,2015 and defendant to be deposed on January 16, 2015; and directing defendant and plaintiff to respond to certain written discovery demands.

The court, pursuant to a so-ordered stipulation dated May 19, 2015, stayed the action pending completion of certain discovery, including the deposition of the plaintiffs and the defendant. The court in a so-ordered stipulation dated April 7, 2016, continued the stay pending certain discovery, including the deposition of the parties. In a so-ordered stipulation dated September 22, 2016, the court continued the stay pending certain discovery, including the depositions of the parties. In a so-ordered stipulation dated January 10, 2017, the court continued the stay, and directed that certain discovery be conducted, including the depositions of the parties. In a so-ordered stipulation dated April 3, 2017, the court lifted the stay and restored the matter to active status, set forth a schedule for certain discovery, and directed the depositions of the parties. Pursuant to said order, motions for summary judgment were to be made returnable no later than August 8, 2017, before the assigned judge.

Pursuant to a so-ordered stipulation dated July 13, 2017, the defendant's motion to vacate the note of issue was withdrawn, a schedule for certain discovery was provided, including the completion of all depositions by August 31, 2017, and motions for summary judgment were to be served on or before October 13, 2017.

Plaintiff, Patrick James Rohan, was deposed on August 15, 2017; plaintiff, Patrick Bryan Rohan, was deposed on August 17, 2017; defendant was deposed by its building superintendent, Bayram Kanbur, on August 23, 2017; non-party witness, FDNY Fire Marshal Edward Reardon was deposed on September 27, 2017.

Defendant e-filed the within motion for summary judgment dismissing the complaint on October 13, 2017, in compliance with the so-ordered stipulation of July 13, 2017. In support of the motion defendant submits the deposition transcripts of the plaintiffs which are not signed, and the signed deposition transcripts of Mr. Kanbur and Fire Marshal Reardon. As to each of the plaintiffs' unsigned deposition transcripts, defendant's counsel states that "[a]s of the service of this motion, this office has not yet received the fully executed original transcript from plaintiffs' counsel".

Plaintiffs' counsel in his affirmation in support of the cross motion states that plaintiffs did not receive their deposition transcripts until September 15, 2017, and that their signed errata sheets were sent to defense counsel in a timely manner on October 23, 2017. Plaintiffs have submitted copies of their executed errata sheets along with copies of their depositions.

Pursuant to CPLR 3116 (a), before its use, the transcript of the deposition of a deponent must be provided to the deponent for his or her review and signature, and any changes in form or substance desired by the deponent shall be recorded. If a deponent refuses or fails to sign his or her deposition under oath within 60 days, it may be used as if fully signed. The party seeking to use an unsigned deposition transcript bears the burden of demonstrating that a copy of the transcript had been submitted to the deponent for review and that the deponent failed to sign and return it within 60 days (*see Franzese v Tanger Factory Outlet Ctrs., Inc.*, 88 AD3d 763, 763-764 [2d Dept 2011]; *Pina v Flik Intl. Corp.*, 25 AD3d 772, 773 [2d Dept 2006]).

The parties herein were required to serve their motions for summary judgment on or before October 13, 2017, and defendant's motion for summary judgment was timely filed on said date. Although defendant has failed to establish when it served a copy of the deposition transcripts on the plaintiffs, the applicable 60 day time-period expired after October 13, 2017. Defendant's submissions, however, do not prejudice the plaintiffs as they have submitted copies of their unsigned deposition transcripts, (*see Nisanov v Khulpateea*, 137 AD3d 1091, 1094 [2d Dept 2016]; *Pavane v Marte*, 109 AD3d 970, 971 [2d Dept 2013]), along with their executed errata sheets.

Plaintiff, Patrick James Rohan, testified at his deposition that the evening before the fire he went to sleep in his bedroom at 11:00 p.m. and that he that he had no recollection of the fire

and did not know what caused it. He stated that he was in a coma for several weeks, that he later spent a little more than a month in a rehabilitation facility, and thereafter resided with his sister and other family members at her home in Long Island, until March 2013, during which time he received treatment from a visiting nurse service and had physical therapy at a nearby location. His injuries due to the fire include smoke inhalation, a broken left wrist that was surgically repaired, and burns to his arms, back, face, and head, and the he had skin grafts to his arms and back from skin taken from his legs.

Patrick James Rohan testified that before the fire, there was a smoke detector in the apartment, but could not recall exactly where it was positioned. He stated that he had previously heard the smoke detector alarm, and that it would go off in the summertime if he was using the stove and it was hot in the kitchen. Although this plaintiff later amended his testimony in a post-deposition two page errata sheet to reflect that there was no smoke alarm in the apartment, he failed to offer any reason for materially altering the substance of his deposition testimony. Therefore, the amended testimony cannot properly be considered (*see* CPLR 3116 [a]; *Vazquez v Flesor*, 128 AD3d 808, 810 [2d Dept 2015]; *Ashford v Tannenhauser*, 108 AD3d 735, 736 [2d Dept 2013]).

Plaintiff, Patrick Bryan Rohan, testified at his deposition that the evening before the fire, he and his then girlfriend went to sleep at 11:00 p.m. on the pullout couch in the living room, and his girlfriend's then five year old daughter slept on the love seat. He stated that he awoke at approximately 2:10 a.m., when his girlfriend shook him, to find that his kitchen was on fire. He made two unsuccessful attempts to pass the kitchen and reach the front door, and that he, his girlfriend and her daughter all escaped through the living room window. It is asserted that as a result of the fire, he sustained a meniscus tear of the left knee but did not have a surgical repair; bruising to both inner thighs; abrasions on his feet and legs; smoke inhalation; and burns to the front of both knees and the balls of both feet as well as the underside of the three smallest toes on his left foot, and the underside of two toes on his right foot. He stated that he worked as a plumbing foreman, and was unable to return to work for a month and one half due to the injuries he sustained in the fire.

Patrick Bryan Rohan testified at his deposition that there was a smoke alarm in the apartment prior to the fire; that it was located in the center of the archway between the dining room and living room; that it had a battery and was functional; and that during the fire, the alarm made a piercing sound and he could hear it above the screams of his girlfriend and her daughter. Although Patrick Byran Rohan later amended his testimony in a post-deposition two page errata sheet to reflect that there was no smoke alarm in the apartment, the only reason offered for materially altering the substance of his deposition testimony is "confusion." This plaintiff's claim of "confusion" is not supported by the record, as there is no indication that he did not understand the questions posed to him regarding the presence of the smoke detector, when he first heard the alarm, and whether it was coming from inside his apartment. Therefore, the amended testimony cannot properly be considered (*see* CPLR 3116 [a]; *Garcia-Rosales v Bais Rochel Resort*, 100 AD3d 687, 687 [2d Dept 2012]; *Thompson v Commack Multiplex*

Cinemas, 83 AD3d 929, 930-931 [2d Dept 2011]).

Fire Marshal Edward Reardon (now a FDNY lieutenant) testified that he had an independent recollection that several appliances were plugged into the same power source in the kitchen, a refrigerator, washer/dryer, fan, and that there was one or two extension cords. He stated that he determined that the fire was accidental and that he was able to rule out building electrical as a cause of the fire as most of the fire damage was in the area where all of the appliances were plugged in, and that the BX cable (electrical wiring) behind the wall outlet showed no signs of damage. He stated that the photographs taken by the fire department showed that the firefighters had opened the walls and that the BX cables behind the sheet rock were "clean," with no fire damage (Tr 29). Reardon stated that the fire originated in the outlet "with everything plugged in," and that the portion of the Fire Incident Report he created, stating that the "cause of fire electrical wiring" referred to the "outlet that had several cords plugged into it like extension cords" (Tr 30). He also stated that he did not see a smoke detector in the apartment, but that this was not a priority for him, as the purpose of the inspection was to determine the cause of the fire. In addition, Reardon stated that a properly functioning circuit breaker would not, in all circumstances, prevent a fire caused by an overloaded outlet.

Defendant, Kew Realty LLC, was deposed by its employee, building superintendent, Bayram Kanbur. Kew Realty LLC owns fourteen multi-family apartment buildings, that have a total of 152 units, including the apartment rented by the Rohans. Kanbur has been the superintendent for Kew Realty LLC since August 23, 2001. He stated that his duties as superintendent included performing some plumbing, painting, plastering, changing tiles, and welding for the tenants, and that he does not do any electrical work.

Kanbur stated that the plaintiffs' building was built about 70 years ago, in 1951; that his employer told him that every apartment is supposed to have a smoke detector; that he was not aware of the regulations pertaining to record keeping for smoke detectors; that he was not instructed to keep records with respect to each smoke detector installed; and that he did not know if Kew Realty LLC kept written records with respect smoke detectors. He stated that he did not remember if ever inspected the plaintiffs' apartment to see if the smoke detector was properly functioning, placed and maintained; that he did not remember if he installed a smoke detector in the plaintiff's apartment at any time between August 23, 2001 and December 10, 2011, and he did not remember going into the subject apartment before the fire.

Kanbur further stated that between the time he began working as the superintendent until December 10, 2011, the tenants of the subject apartment did not make any complaints to him about the electricity, the lighting, or the electrical outlets in the apartment, and that they did not talk to him, in any way, about a smoke detector in the apartment, nor did anyone else tell him that there were any problems or complaints with the electrical wiring or a smoke detector in the apartment.

Kanbur stated that when he began work in 2001, the owner hired Gemini [Gemini Electric Incorporated] to install new circuit breaker boxes and a new electrical line that connected to the new circuit breakers in the kitchens in each apartment in the complex, and to install a box in the wall with four electrical outlets in each kitchen. He stated that the circuit breaker boxes replaced the old fuse boxes in the apartments; that the fuse boxes were not removed and that some were plastered over; and that the fuse boxes were disconnected. After the electrical work was performed, Kanbur closed the holes in the kitchen wall and plastered and painted the area. The project took approximately four years, and Kanbur observed the work performed in the plaintiffs' apartment in 2003 or 2004. No other changes were made to the electrical wiring in the subject apartment.

Defendant in support of the motion also submits a certified copy of the Fire Marshal's report which states, in pertinent part, that a smoke detector was "Not Present." Plaintiffs, in opposition, submit a copy of FDNY Battalion Chief Stephen T. Browne's incident report, which states in pertinent part, with respect to a smoke detector "N-None present."

On a motion for summary judgment, the movant bears the initial burden of establishing, *prima facie*, entitlement to judgment as a matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324[1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Indus. Inc.*, 10 NY3d 733, 735 [2008]). Once a *prima facie* showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *see also Zuckerman v City of New York*, 49 NY2d at 557; CPLR 3212[b]).

When deciding a summary judgment motion, the court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626[1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231[1978]). Further, "[i]t is not the function of a court deciding a summary judgment motion to make credibility determinations" (*Vega v Restani Corp.*, 18 NY3d 499, 505 [2012], citing *Sillman*, 3 NY2d at 404).

The court finds that Fire Marshal Reardon's testimony and the documentary evidence submitted herein establishes that the cause of the fire was not electrical wiring and that the fire started in an overloaded outlet in the kitchen. Reardon testified that the BX cable in the wall

behind the outlet was not damaged by the fire, and that said wiring was not the cause of the fire. Reardon's testimony thus demonstrates the absence of a factual issue as to whether the electrical wiring in the subject apartment was defective (*see Andrews v New York City Hous. Auth.*, 66 AD3d 619 [2d Dept 2009]; *Delgado v New York City Hous. Auth.*, 51 AD3d 570 [1st Dept 2008], *lv denied* 11 NY3d 706 [2008]). Plaintiffs, in opposition, have not presented any admissible evidence that the fire was caused by defective electrical wiring.

Defendant, however, has not offered any evidence as to whether the circuit breaker functioned properly prior to the fire. At the most, Fire Marshal Reardon testified that a properly functioning circuit breaker would not, in all instances, shut off the electricity to an electrical outlet that is overloaded. He offered no testimony as to whether the circuit breaker in the plaintiffs' apartment failed to function properly or was defective. Defendant, thus, has not demonstrated that subject circuit breaker functioned properly and was not a proximate cause of the plaintiffs' injuries.

New York City Housing Maintenance Code (Administrative Code of the City of New) § 27-2045, which regulates the rights and duties of owners and tenants with respect to the installation and maintenance of smoke detectors, makes clear that the owner's obligation, subject to certain exceptions, not here applicable, contained in paragraphs (3) and (4) of subdivision (a) of the section, is to "provide and install one or more approved and operational smoke detecting devices in each dwelling unit" (Section 27-2045 [a] [1]). The owner is also required to periodically replace such devices upon the expiration of their useful life. Subject to the same inapplicable exceptions, an owner, having complied with the duty to provide and install such devices, is not required to keep and maintain the detectors in good repair or to replace a device that is stolen, removed, missing or rendered inoperable (Administrative Code of the City of New York § 27-2045 [c]). In such circumstances, it is the "sole duty" of the occupant of the dwelling unit to "(1) keep and maintain [the smoke detecting] device in good repair; and (2) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of [the] dwelling unit" (Administrative Code of the City of New York § 27-2045 [b]).

Here, defendant has not submitted any evidence that it installed an operational smoke detector in the plaintiffs' apartment, as required by Administrative Code of City of NY § 27-2045 (*see Taylor v New York City Housing Authority*, 116 AD3d 695 [2d Dept 2014]). To the extent that defendant and its expert seeks to rely upon the plaintiffs' deposition testimony with respect to the presence of a functional smoke detector in the subject apartment, it noted that the defendant has also submitted the deposition of Fire Marshal Reardon, as well as his report which contradicts the plaintiffs' testimony regarding the presence of a smoke detector in the subject apartment. The court therefore finds that defendant has not established its right to summary judgment dismissing the complaint.

Plaintiffs have cross-moved for an order striking the defendant's answer, pursuant to CPLR 3126 and 3124, and assert that the defendant has refused to provide discovery in violation of six prior orders and multiple demands, and produced a "know-nothing" witness at the deposition and improperly instructed the witness not to answer relevant questions. In the alternative, plaintiffs seek to resolve the issues of notice and causation in their favor and preclude the defendant from disputing the same at trial.

The court issued a compliance conference order dated October 30, 2014, directing plaintiffs to serve and file a note of issue on or before April 3, 2015; directing plaintiff to be deposed on January 9, 2015, and defendant to be deposed on January 16, 2015; and directing defendant to respond to plaintiffs' combined demands and BP demand dated March 9, 2014 [sic] by December 16, 2014; directing plaintiffs to respond to defendant's combined demands dated January 13, 2013, to the extent not done, by December 16, 2014.

The court, pursuant to a so-ordered stipulation dated May 19, 2015, stayed the action pending completion of certain discovery, including the deposition of the plaintiffs and the defendant. In a so-ordered stipulation dated April 7, 2016, the court continued the stay pending certain discovery, including the deposition of the parties. The stay was thereafter continued pending certain discovery, including the depositions of the parties pursuant to a so-ordered stipulation dated September 22, 2016. In a so-ordered stipulation dated January 10, 2017, the court continued the stay, and again directed that certain discovery be conducted, including the depositions of the parties. The court lifted the stay and restored the matter to active status pursuant to a so-ordered stipulation dated April 3, 2017, set forth a schedule for certain discovery, and once again directed the depositions of the parties.

The defendant's prior motion to vacate the note of issue was withdrawn, pursuant to a so-ordered stipulation dated July 13, 2017, which set forth a schedule for certain discovery including the completion of all depositions by August 31, 2017. The court ordered that motions for summary judgment were to be served on or before October 13, 2017.

Following the deposition of the defendant's witness on August 23, 2017, plaintiffs served a supplemental demand for discovery dated September 12, 2017. It is noted that the defendant served a response to the plaintiffs' combined demands dated March 19, 2014, by December 16, 2014, in compliance with the court's prior order of October 30, 2014. None of the court's subsequent demands make any reference to the plaintiffs' combined demands dated March 19, 2014, and plaintiffs made no prior motions regarding the adequacy of said response.

In response to the within cross motion, defendant's managing agent, Joshua Lazarus has submitted an affidavit stating that he was the defendant's managing agent on December 10, 2011, and that he maintains the defendant's records for the subject apartment. Lazarus states that in response to the plaintiffs' combined demands dated March 19, 2014, and plaintiffs' post-EBT demand for discovery dated September 12, 2017, he "performed a record search of any

written violations, complaints, inspections, installations and work orders regarding electrical wiring, circuit breakers, and smoke detectors" in the subject apartment; that he "also performed a search for any incident/accident report, prepared in the ordinary course of KEW's business, pertaining to this loss"; and that "[t]he search produced no such relevant records responsive to plaintiffs' Combined Demands dated March 19, 2014, and Post-EBT Supplemental Demand for Discovery dated September 12, 2017."

Kew Realty LLC, is required to "keep such records as the commissioner shall prescribe relating to the installation and maintenance of smoke detecting devices in the building, including records showing that such devices meet the requirements of article 312 of chapter 3 of title 28 of the administrative code of the City of New York, and make such records available to the commissioner upon request" (Administrative Code of the City of New York § 27-2045 [a][5]).

The provisions of 28 NYCRR §§12-01 and 12-03 require the owners of Class A and Class B Multiple Dwellings to keep records on the premises, unless specifically exempted, relating to the installation and maintenance of smoke detecting devices in the building, including the date of installation of each smoke detecting device; whether the device receives its primary power from the building wiring or if it is battery operated; the apartment number and location within the apartment where the device is installed; maintenance work on the device and the date the tenant requested replacement/repair. Said rules were amended in the City Record on September 18, 2017 and made effective on October 18, 2017, with respect to notices informing tenants of procedures to be followed in the event of a suspected gas leak and clarified what records the owners are required to keep for smoke detecting devices and carbon monoxide alarms. Said amendments also permitted said records to be kept on the premises or in the office of the managing agent or the owner.

Lazarus, in his affidavit, does not state where he performed his search of Kew Realty LLC's records, and does not state that the owner was in compliance with the record keeping requirements of the above provisions of the Administrative Code and applicable rules prior to the fire in the plaintiffs' apartment. The court therefore finds that defendant's response to the plaintiffs' combined demands and post-EBT supplemental demand to be inadequate. It is noted that the note of issue has been vacated and plaintiffs may seek further discovery with respect to the defendant's records pertaining to a smoke detector. However, as plaintiffs have not established that the defendant has wilfully violated a prior order of this court, that branch of the cross motion which seeks to strike the answer or in the alternative to resolve issues of notice and causation in plaintiff's favor and to preclude the defendant from disputing the same at trial, is denied.

Plaintiffs have not established that Kanbur, the defendant's building superintendent, was improperly designated to appear at the deposition on behalf of the defendant. It is well settled that the scope of examination permissible at a deposition is broader than the scope of

examination permissible at trial (*see Allen v Crowell-Collier Publ. Co.,* 21 NY2d 403 [1968]; *Horowitz v Upjohn Co.*, 149 AD2d 467, 468 [2d Dept 1989]). A direction not to answer questions at a deposition is not addressed by the CPLR. However, CPLR 3113(c), provides that depositions "shall proceed as permitted in the trial of actions in open court." Therefore,"[i]n conducting depositions, questions should be freely permitted 'unless a question is clearly violative of a witness' constitutional rights, or of some privilege recognized in law, or is palpably irrelevant" (*Barber v BPS Venture, Inc.*, 31 AD3d 897[3d Dept 2006] [citation omitted]; *see O'Neill v Ho*, 28 AD3d 626, 627[2d Dept 2006]). Otherwise, "questions should be freely permitted and answered, since all objections other than as to form are preserved for the trial and may be raised at that time" (*Freedco Prods., Inc. v New York Tel. Co.*, 47 AD2d 654, 655 [2d Dept 1975]). Palpably improper questions include those that seek legal conclusions or are otherwise related to a party's understanding of his or her legal contentions (*Lobdell v S. Buffalo Ry.*, 159 AD2d 958 [4th Dept 1990]).

In 2006, the Uniform Rules for Trial Courts were amended to add Part 221, also known as the Uniform Rules for the Conduct of Depositions. Part 221 was designed to combat obstructive behavior during a deposition. 22 NYCRR 221.1 permits objections only with regard to those that would be waived if not interposed, pursuant to CPLR 3115. CPLR 3115(b), (c) and (d) provide certain limited bases for making objections during depositions, including errors which might be obviated if known promptly, disqualification of the person taking the deposition, and competency of witnesses or admissibility of testimony.

22 NYCRR 221.1(a) provides that objections made at a deposition "shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of the person to apply for appropriate relief pursuant to Article 31 of the CPLR."

22 NYCRR 221.2 requires a deponent to answer all questions, "except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person." This section further prohibits an attorney from directing a deponent not to answer, except as provided in CPLR 3115, or in said subsection, and provides that "[a]ny refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition."

The court has reviewed Kanpur's entire deposition transcript and finds that the objections made by defendant's counsel during the course of the deposition were not improper. The line of questioning cited to in the cross motion sought to elicit opinions from Kanpur, who is not an expert witness. Under these circumstances, an answer would clearly "cause significant prejudice to any person" (22 NYCRR 221.2 [iii]), and the objections were not improper. Furthermore, the court finds that the objections raised by plaintiffs' counsel were neither

dilatory nor obstructionist.

Finally, that branch of the cross motion which seeks the imposition of sanctions is denied.

In view of the foregoing defendant's motion for summary judgment is denied, and the plaintiffs' cross motion is denied in its entirety.

Dated: July 16, 2018

DARRELL L. GAVRIN, J.S.C.