Hawkins v New York City Hous. Auth.
2018 NY Slip Op 32991(U)
November 16, 2018
Supreme Court, New York County
Docket Number: 155192/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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BEVERLY HAWKINS,

Plaintiff

- against -

NEW YORK CITY HOUSING AUTHORITY,

Defendant

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Index No. 155192/2016

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiff sues for a fractured little finger November 9, 2015, when she used it to open a door to 250 Madison Street, New York County, defendant's management office for its housing development where plaintiff resided, and the door stuck shut. Plaintiff moves to compel defendant to produce its employees Cecilio Guzman and Michael Hunte for depositions, because the deposition testimony by the two employees defendant previously produced, defendant's records, and the affidavits by Guzman and Hunte demonstrate that they possess relevant knowledge. C.P.L.R. § 3124. While the previous two witnesses also possessed relevant knowledge, it is not the same relevant knowledge that Guzman and Hunte possess.

Defendant's previous witness Gail Farquharson was in the management office when plaintiff was injured, regularly assisted residents who visited the office, and sent orders for repairs to defendant's maintenance department. Therefore she knew about plaintiff's injury, used the door regularly, and was familiar

with caretakers checking the door daily to ensure access to the office and with any orders to repair the door.

Defendant acknowledges that at a Status Conference November 15, 2017, defendant agreed to produce Patrick Credle, its janitorial caretaker at 250 Madison Street in November 2015 and before then. He, too, used the door regularly and like Farquharson never encountered difficulty opening the door himself, but he was unfamiliar with any maintenance or repairs of the door.

Guzman, on the other hand, inspected the door approximately five months before plaintiff's injury pursuant to a work order generated in response to a report that the position of the key in the lock to the door was not functioning. He confirmed that the key cylinder needed repinning, but did not repair it then. His inspection, however, likely entailed opening the door. Thus he may possess knowledge whether the door opened easily, whether it stuck, whether the need to repin the key cylinder may have affected the opening of the door, and whether any subsequent repair was effected to the key cylinder or it was left to continue malfunctioning. Therefore plaintiff has met her burden to show the previous witnesses' lack of knowledge about repairs to the door and the likelihood that Guzman may possess that knowledge or related information necessary to her prosecution of this action, even if that information supports defendant rather than plaintiff. Best Payphones, Inc. v. Guzov Ofsink, LLC, 135 A.D.3d 585, 585 (1st Dep't 2016); Alexopoulos v. Metropolitan

Transp. Auth., 37 A.D.3d 232, 233 (1st Dep't 2007); Brevetti v. City of New York, 79 A.D.3d 958, 958-59 (2d Dep't 2010); Filoramo v. City of New York, 61 A.D.3d 715, 715-16 (2d Dep't 2009). At minimum, plaintiff is entitled to test the veracity of Guzman's affidavit.

Hunte inspected the door approximately 19 months before plaintiff's injury and again approximately six months before her injury pursuant to two work orders generated in response to similar reports, first, that the lock to the door was not functioning and, second, that the door was not self-latching and was noisy. In each instance he repaired the door, which likely entailed opening the door. Thus he may possess similar knowledge whether the door opened easily, whether it stuck, and whether the malfunctioning lock or self-latching mechanism, the noise generated by opening or closing the door, or his repairs of these conditions may have affected the ease with which the door opened. Plaintiff has not identified, however, what knowledge Hunte is likely to possess that Guzman will not possess. In fact, Hunte's knowledge is likely to be less useful, because it will be superseded by Guzman's subsequent inspection. Moreover, plaintiff anticipates that each witness may lead to additional, more probative witnesses. Therefore the court perceives no need for Hunte's deposition unless Guzman's deposition proves entirely fruitless. Epperson v. City of New York, 133 A.D.3d 522, 523 (1st Dep't 2015); Jenkins v. Trustees of the Masonic Hall & Asylum Fund, 112 A.D.3d 469, 469 (1st Dep't 2013); Wo Yee Hing

Realty, Corp. v. Stern, 74 A.D.3d 469, 469-70 (1st Dep't 2010); Hayden v. City of New York, 26 A.D.3d 262, 262 (1st Dep't 2006).

Consequently, for the reasons explained above, the court grants plaintiff's motion to compel defendant to produce its employee Cecilio Guzman for a deposition, but denies plaintiff's motion to compel Michael Hunte's deposition. C.P.L.R. § 3124.

DATED: November 16, 2018

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.