

Wenzel v All City Remodeling, Inc.

2019 NY Slip Op 30989(U)

April 15, 2019

Supreme Court, New York County

Docket Number: 155533/2017

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

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INDEX NO. 155533/2017

ILONNA WENZEL,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 002

- v -

ALL CITY REMODELING, INC., 217 E 88TH AND
212-234 E 89TH ST LLC, SOLIL NY LLC, SOLIL
MANAGEMENT, LLC, SOL GOLDMAN
INVESTMENTS, LLC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 23-35, 37-39
were read on this motion for discovery.

By notice of motion, plaintiff moves for an order compelling defendant All City
Remodeling, Inc. to produce three witnesses for examinations before trial. All City opposes.

In this action, plaintiff sues for personal injuries she allegedly sustained when the ceiling
of her apartment collapsed on her while All City was renovating the apartment above hers.
(NYSCEF 25). All City produced for deposition a carpenter who worked in the apartment before
the ceiling collapsed. Plaintiff alleges that the carpenter has no knowledge of work done before
he began working there or who performed it, but identified his supervisor and his helper as
possessing relevant information. She also contends that All City's secretary was a party to
relevant correspondence among all of the defendants. Plaintiff thus seeks to compel All City to
produce the carpenter's helper, supervisor, and the secretary who possess material and necessary
information. (Id.).

All City asserts that the carpenter provided sufficient information and was most likely to have relevant information, having worked in the apartment immediately before the incident, and that there is no evidence that his helper entered the apartment. In any event, the helper would have done the same work. It also argues that plaintiff's belief that the supervisor has pertinent knowledge is speculative, as the carpenter testified that he did not know what role, if any, the supervisor played in investigating the incident. And, as the secretary's only connection to the incident is the correspondence, and as plaintiff has copies of that correspondence, plaintiff does not demonstrate that the secretary has any material and necessary information. All City additionally maintains that depositions of the other defendants should be conducted before any more depositions of its employees are held, as the other defendants likely have the information plaintiff seeks. (NYSCEF 37).

In reply, plaintiff observes that the carpenter had no knowledge as to the scope of All City's work in the apartment, that the helper and supervisor observed the work and events leading to the incident, and that the secretary has personal knowledge based on his correspondence with defendants. (NYSCEF 38).

A corporation may generally designate which of its employees it will produce for deposition. (*Faber v New York City Tr. Auth.*, 177 AD2d 321, 322 [1st Dept 1991]). Thus, a party seeking additional corporate depositions must demonstrate that the person deposed provided inadequate information or had insufficient knowledge, and that there is a substantial likelihood that the person sought for deposition possesses information material and necessary to the prosecution of the case. (*O'Brien v Vil. of Babylon*, 153 AD3d 547 [2d Dept 2017]).

The carpenter's testimony reflects that he not only worked in the apartment above plaintiff's before and after the incident, but he also viewed the cracks that had formed on her

ceiling before the incident. While his supervisor and helper may have also known about All City's work at the apartment, plaintiff does not show that the carpenter had insufficient knowledge. (*See e.g., Rosado v A&P Store*, 26 Misc 3d 935 [Sup Ct, Westchester County 2009] [while other employees may have known of condition of room before accident, witness produced also had personal knowledge of condition, and plaintiff thus failed to show that testimony insufficient or inadequate]).

Moreover, a review of the carpenter's testimony reflects while he was unable to answer questions outside of the scope his work on the apartment, there is no reason to believe that plaintiff does not know the answers to those questions through the exchange of document discovery or through testimony of the other defendants. For example, the carpenter did not know about All City's insurance coverage, but in All City's discovery responses it provided that information and a copy of the declaration page. The same is true for the contract entered into between All City and the other defendants for the work at issue, a copy of which was provided to plaintiff. (NYSCEF 11, 17, 18). (*See e.g., Colicchio by Colicchio v City of New York*, 181 AD2d 528 [1st Dept 1992] [motion for additional deposition denied as plaintiff had deposed witnesses with knowledge of condition, and had received numerous documents related to condition]).

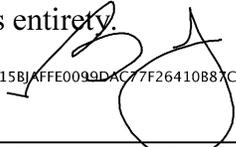
Questions relating to the other defendants may be pursued through depositions of those defendants. Plaintiff also fails to establish that the questions that the carpenter could not answer are material and necessary to this action. (*See Carlucci v City of New York*, 89 AD3d 489 [1st Dept 2011] [plaintiff failed to show that information sought from witness would be material and necessary to action or that material and necessary information could not be obtained through document production and deposition of other witnesses]).

There is also no evidence offered that the testimony of the carpenter's supervisor or

helper would not be cumulative, nor evidence that the secretary has relevant personal information other than what is contained in the correspondence, copies of which plaintiff has in her possession. (See *Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc.*, 41 AD3d 362, 364 [1st Dept 2007], *affd on other grounds* 11 NY3d 843 [2008] [court denied motion to compel production of additional witness as record established that testimony sought would be duplicative]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion to compel is denied in its entirety.

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BARBARA JAFFE, J.S.C.

4/15/2019
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE