

Pereda v Time Warner Inc.

2019 NY Slip Op 31251(U)

April 30, 2019

Supreme Court, New York County

Docket Number: 155438/2016

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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MARIA PEREDA,

Index No. 155438/2016

Plaintiff

- against -

DECISION AND ORDER

TIME WARNER INC., WB STUDIO ENTERPRISES
INC., and WARNER BROS. WORLDWIDE
TELEVISION DISTRIBUTION INC.,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for personal injuries sustained January 12, 2016, when she tripped and fell over cables and wires placed across the sidewalk by defendants' film crews on Old Slip between Water and Front Streets in New York County. Plaintiff moves (1) for penalties due to defendants' failure to produce their officers or employees with relevant knowledge for depositions, in compliance with successive orders for their depositions, or (2) to compel defendants to produce such witnesses. C.P.L.R. §§ 3124, 3126(3). Plaintiff seeks these depositions because the deposition testimony by the single witness all three defendants previously produced, who did not even know whether any of defendants had employed him, was unknowledgeable about many relevant issues, and it defies belief that no officer or employee of any defendant is knowledgeable about these issues. Defendants cross-move for sanctions, insisting that plaintiff has mischaracterized their single witness as unknowledgeable. 22

N.Y.C.R.R. § 130-1.1(c(3)).

The witness all defendants previously produced as each one's own witness, Paul Mallick, ran the cables and wires to provide electricity to defendants' basecamp for production of a film in the area where plaintiff fell. Defendants claim they collectively hired Mallick as the basecamp operator for their production. Although Mallick possessed relevant knowledge about the physical description of the area and the running of the cables and wires on the day when plaintiff fell, he never observed plaintiff in the area and knew of no one else who observed her. He learned that a person claimed to be injured from tripping over cables through a woman in defendants' production office, whom he could not identify, and did not know who notified her.

Mallick knew nothing about defendants' relationship to each other and their responsibilities for or other involvement with the filming project: whether defendants maintained any records of it or whether there were any contracts between defendants or between them and other entities related to the project. Such records or contracts likely would shed light on defendants' relationship; their responsibilities for and control over the project's activities, including the laying of cables and wires over the sidewalk; employees assigned to the area where plaintiff fell, who may have observed her fall; reports of the injury, by whom, and to whom; and follow-up investigations of the injury.

Plaintiff thus has met her burden to show the inadequacies

in the previous witness' knowledge about relevant information and persuasively urges that there must be at least one officer or employee in each defendant corporation who is knowledgeable about the relevant issues outlined above, about which Mallick knew nothing. Plaintiff also shows a likelihood that Jennifer Winterbotham, the woman in defendants' production office who informed Mallick that plaintiff claimed to be injured from tripping over cables, may possess knowledge about witnesses who observed plaintiff in the area of the cables or knowledge that may lead to information necessary to the prosecution of this action. 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); Trueforge Global Mach. Group v. Viraj Group, 84 A.D.3d 938, 939-40 (2d Dep't 2011); Aronson v. Im, 81 A.D.3d 577, 577-78 (2d Dep't 2011).

Plaintiff's emphasis on the relevant issues about which Mallick undisputedly knew nothing in her quest to depose a witness with knowledge about those issues does not warrant sanctions. Gordon Group Invs., LLC v. Kugler, 127 A.D.3d 592, 594 (1st Dep't 2015); Komolov v. Segal, 96 A.D.3d 513, 514 (1st Dep't 2012); Hunts Point Term. Produce Coop. Assn., Inc. v. New York City Economic Dev. Corp., 54 A.D.3d 296, 296 (1st Dep't 2008); Parametric Capital Mgt., LLC v. Lacher, 26 A.D.3d 175, 175 (1st Dep't 2006). Sanctions are all the more unwarranted given that plaintiff's motion for that relief is meritorious. Komolov v. Segal, 96 A.D.3d at 514; Hunts Point Term. Produce Coop.

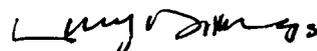
Assn., Inc. v. New York City Economic Dev. Corp., 54 A.D.3d at 296.

Consequently, the court grants plaintiff's motion to compel each defendant corporation to produce for a deposition an officer or employee knowledgeable about defendants' relationship to each other, their responsibilities for and involvement with the filming of Mysteries of Laura on Old Slip, any records of the project, any contracts related to it, and any reports of plaintiff's fall. C.P.L.R. §§ 3107, 3124. Defendants also claim they collectively hired Jennifer Winterbotham and still employ her. If in fact one of defendants in particular employs her and she is knowledgeable about the above relevant subjects, that defendant may designate her as its witness. Otherwise defendants shall produce her in addition to the three witnesses specified above. If any defendant claims that no one in the corporation is knowledgeable about even one of the above subjects, that defendant shall produce a witness to be examined on that claim.

By May 15, 2019, plaintiff shall re-serve notices of these depositions, to be conducted by June 14, 2019, or plaintiff shall have waived the further depositions. If any defendant fails to produce a witness in compliance with plaintiff's re-served notice, that defendant shall be precluded from offering any witness other than Paul Mallick on its liability, in support of or in opposition to summary judgment, or at trial. C.P.L.R. § 3126(2); Gibbs v. St. Barnabas Hosp., 16 N.Y.3d 74, 82-83 (2010); Northway Eng'g v. Felix Indus., 77 N.Y.2d 332, 335 (1991); Garcia

v. Defex, 59 A.D.3d 183, 183-84 (1st Dep't 2009); Rosa v. New York City Tr. Auth., 55 A.D.3d 344, 345 (1st Dep't 2008). The court denies plaintiff's motion insofar as it seeks any further penalty and denies defendants' cross-motion for sanctions. C.P.L.R. § 3126(3); 22 N.Y.C.R.R. § 130-1.1.

DATED: April 30, 2019



LUCY BILLINGS, J.S.C.

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