

<b>Crockett v Target Corp.</b>
2019 NY Slip Op 31279(U)
May 1, 2019
Supreme Court, New York County
Docket Number: 153659/2016
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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NORA NOEMI CROCKETT,

Index No. 153659/2016

Plaintiff

- against -

DECISION AND ORDER

TARGET CORPORATION and ALL JERSEY  
JANITORIAL SERVICE NY, INC.,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for personal injuries sustained May 4, 2013, when she slipped and fell on detergent that had spilled on the floor in one of the aisles at defendant Target Corporation's store at 517 East 117th Street in East Harlem, New York County. Co-defendant All Jersey Janitorial Service NY, Inc., moves to compel Target Corporation to produce a witness with personal knowledge regarding the circumstances of plaintiff's fall, who All Jersey Janitorial Service believes is Target Corporation's employee Marie Alexis. C.P.L.R. § 3124. It seeks this deposition because the two witnesses Target Corporation previously produced for depositions, while knowledgeable about other relevant issues, did not recall and were unknowledgeable regarding the circumstances of plaintiff's fall, including the conditions in the aisle where she fell. These witnesses as well as documentary evidence identified Alexis as the supervisory employee, the "Senior Team Leader," responsible for the area where plaintiff fell on the date when she fell. Target

Corporation cross-moves for a protective order limiting Alexis's deposition to her work activities and observations on the date when plaintiff fell. C.P.L.R. § 3103(a).

Target Corporation's witness Samuel Brosen, the Leader on Duty in the store responsible for Target Corporation departments assigned to him, authenticated his signature on three reports of plaintiff's fall and injury that he prepared, but lacked any independent recollection of the facts he reported, even after reviewing the reports. One of these reports, the Leader on Duty Investigation Report, identified Alexis as assigned to the area of the East Harlem store where detergents are displayed. Brosen also testified that Target Corporation employees and All Jersey Janitorial Service employees were readily distinguishable by their uniforms, so that the janitor described in the Investigation Report who began to clean up a spill in aisle B34, but left it unattended while he obtained paper towels, was identified as a janitor by his uniform.

Target Corporation's second witness, Robert Stermann, the Store Team Leader in the East Harlem store, lacked any recollection whether he was in the store when plaintiff fell and lacked any personal knowledge of the circumstances of her fall. He did testify, however, about Target Team Members' knowledge of the procedure Team Members were to follow to clean up spills on the floor: notify the Store Team Leader, wait by the spill until another employee arrives, and ensure that the spill is cleaned up using a "wet floor" sign, paper towels, and other absorbent from

stations in the store where those materials are available. Stermann then maintained that Target Team Members were to follow a different procedure at the store where plaintiff fell: contact All Jersey Janitorial Service and ensure that its employees clean up the spill. He further admitted that the Leader on Duty was to proceed to the spill, contact All Jersey Janitorial Service, and remain at the spill until All Jersey Janitorial Service arrived there.

In support of the cross-motion, Target Corporation presents Alexis's affidavit, effectively offering her as a witness regarding the relevant issues of which she possesses knowledge. Although she denies recollection of plaintiff's fall, she does not deny that she was the supervisory employee, the "Senior Team Leader," responsible for the area where plaintiff fell on the date when she fell. Therefore, even Alexis did not observe plaintiff's fall, Alexis may have observed plaintiff and the conditions in the area where she fell and well may know of other employees whom Alexis assigned to the area and who may have observed plaintiff and the conditions in the area. Alexis surely knows how she learned that plaintiff was injured from slipping on detergent in aisle B34. All this information is likely to lead to other witnesses with relevant knowledge.

Alexis also discloses that she knows all about All Jersey Janitorial Service's responsibilities at the store. Therefore she surely is equally knowledgeable about Target Corporation employees' responsibilities, their performance of those

responsibilities, and their supervision of All Jersey Janitorial Service's performance of its responsibilities. In fact she admits familiarity with the protocol for the Leader on Duty in responding to a spill where plaintiff fell, a subject on which the Leader on Duty himself lacked recollection or knowledge.

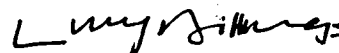
All Jersey Janitorial Service thus has met its burden to show the inadequacies in the previous witnesses' knowledge about relevant information and a likelihood that Alexis possesses knowledge about the relevant issues outlined above, including employees or other witnesses who may have observed plaintiff in the area of her fall or observed that area around the time when she fell. 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). These witnesses also may possess knowledge about both Target Corporation and All Jersey Janitorial Service employees' performance of their responsibilities in responding to the spill on which plaintiff slipped or other relevant knowledge. Any of this knowledge may lead to information necessary to the defense of plaintiff's action and Target Corporation's cross-claims and the prosecution of All Jersey Janitorial Service's cross-claim.

Much of All Jersey Janitorial Service's proposed questioning of Alexis, however, seeks immaterial information because, based on Target Corporation's admissions in its Leader on Duty

Investigation Report that Target Corporation summoned All Jersey Janitorial Service to clean up the spill, Target Corporation concedes that it received notice of the spill on which plaintiff slipped. Nevertheless, All Jersey Janitorial Service may question Alexis on any subjects to which her affidavit refers, including testing the veracity of her claimed lack of recollection or personal knowledge of relevant issues. Moreover, even if she lacks first hand knowledge, she may be questioned about relevant information that she learned from other persons or documents, which may lead to admissible evidence.

Consequently, the court grants defendant All Jersey Janitorial Service's motion to compel defendant Target Corporation to produce Marie Alexis for a deposition. C.P.L.R. §§ 3107, 3124. The court grants Target Corporation's cross-motion only to the extent that All Jersey Janitorial Service's and plaintiff's questioning of Alexis must proceed within the scope delineated above and any expansion of that scope by Target Corporation's questions. The court otherwise denies the cross-motion. C.P.L.R. § 3103(a). By May 17, 2019, All Jersey Janitorial Service shall re-serve a notice of Marie Alexis's deposition, to be conducted by June 7, 2019, or All Jersey Janitorial Service shall have waived the further deposition.

DATED: May 1, 2019



LUCY BILLINGS, J.S.C.

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