

**Mendoza v City of New York**

2019 NY Slip Op 33536(U)

November 27, 2019

Supreme Court, New York County

Docket Number: 160188/2013

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

PEDRO MENDOZA and JEN MARIE MENDOZA,

Index No. 160188/2013

Plaintiffs

- against -

CITY OF NEW YORK, NEW YORK CITY HEALTH  
AND HOSPITALS CORPORATION, HHC  
GOUVERNEUR HEALTHCARE SERVICES, HUNTER  
ROBERTS CONSTRUCTION GROUP, L.L.C.,  
DORMITORY AUTHORITY OF THE STATE OF NEW  
YORK, J. PETROCELLI CONTRACTING, INC.,  
B&G ELECTRICAL CONTRACTORS OF N.Y.,  
INC., PRISTINE SERVICES, INC., and  
ADVANCE CONSTRUCTION,

Defendants

CITY OF NEW YORK, NEW YORK CITY HEALTH  
AND HOSPITALS CORPORATION, HHC  
GOUVERNEUR HEALTHCARE SERVICES, HUNTER  
ROBERTS CONSTRUCTION GROUP, L.L.C.,

Third Party Plaintiffs

- against -

PRISTINE SERVICES, INC.,

Third Party Defendant

DORMITORY AUTHORITY OF THE STATE OF NEW  
YORK,

Second Third Party Plaintiff

- against -

B&G ELECTRICAL CONTRACTORS OF N.Y.,  
INC.,

Second Third Party Defendant

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DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Third party defendant Prisine Services, Inc., moves to compel defendant-second third party defendant B&G Electrical Contractors of N.Y., Inc., to produce its employee John Begatta for a deposition. C.P.L.R. § 3124.

I. TESTIMONY FROM THE PREVIOUS WITNESS AND POTENTIAL TESTIMONY FROM BEGATTA

Pristine Services seeks Begatta's deposition because Begatta wrote B&G Electrical Contractors' "Supervisor's Report" of plaintiff's injury when plaintiff tripped and fell over B&G Electrical Contractors' electrical conduit. It was not in use, but was lying damaged in the hallway on the fourth floor of a building under construction where plaintiff, B&G Electrical Contractors, and Pristine Services were working. Pristine Services insists, and no party disputes, that liability in this action depends at least in part on which party was responsible for leaving the conduit in the fourth floor hallway. Nor does any party dispute that B&G Electrical Contractors comprised the only electricians on the construction site and the only contractor that used electrical conduit there.

The previous witness whom B&G Electrical Contractors produced for a deposition, however, General Foreman Sean Caufield, was not at the construction site when plaintiff was injured. Caufield lacked personal knowledge regarding the circumstances of plaintiff's injury and had gathered no

information from B&G Electrical Contractors' employees regarding plaintiff's injury or how or why electrical conduit was left in the fourth floor hallway.

Begatta, in contrast, who was the supervisor at the site directly under Caufield, is more likely to possess relevant knowledge not only of the injury site, but also of the circumstances surrounding plaintiff's injury, because in preparing his report he may have investigated how plaintiff's injury occurred. Any investigation ought to have included communications with B&G Electrical Contractors' employees regarding how the electrical conduit was left in the fourth floor hallway. From any investigation, or simply in his supervisory position, he may know who was responsible for tracking B&G Electrical Contractors' inventory of conduit. He also may know whether Pristine Services' laborers, who cleaned up debris at the construction site, were aware of the damaged, unusable conduit lying in the one of the hallways where the laborers cleaned up debris, yet ignored the potential hazard. Pristine Services is entitled to explore all these issues.

## II. CONCLUSION

Pristine Services thus has met its burden to show the inadequacies in B&G Electrical Contractors' previous witness' knowledge about relevant issues and to compel B&G Electrical Contractors to produce a second witness, John Begatta, who is more likely to know more about the relevant issues about which the previous witness knew little. 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); Gomez v. State of New York, 106 A.D.3d 870, 872-73 (2d Dep't 2013); Trueforge Global Mach. Group v. Viraj Group, 84 A.D.3d 938, 939-40 (2d Dep't 2011). Therefore the court grants the motion by Pristine Services, Inc., to compel B&G Electrical Contractors of N.Y., Inc., to produce John Begatta for a deposition. C.P.L.R. § 3124. He shall appear at the time and place stipulated on the record November 14, 2019: December 4, 2019, at 10:00 a.m. at the office of defendants-third party plaintiffs' attorney, 44 Wall Street, 15th floor, in New York County. The parties may not postpone this time without the court's permission. Plaintiffs shall serve and file a note of issue by December 17, 2019.

DATED: November 27, 2019



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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.