

**Rivas v Summit Glory LLC**

2020 NY Slip Op 34014(U)

December 3, 2020

Supreme Court, New York County

Docket Number: 155189/2019

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM**

*Justice*

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**INDEX NO.** 155189/2019

ANNEMARIE RIVAS, JASON RIVAS, HER LAWFULLY  
WEDDED SPOUSE,

**MOTION DATE** December 2,  
2020

Plaintiff,

**MOTION SEQ. NO.** 004

- v -

SUMMIT GLORY LLC, FOSUN PROPERTY HOLDINGS,  
CBRE, INC., BARBARA QUINTANA

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70,  
71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, defendants' motion to strike plaintiff's complaint and/or  
compel discovery is denied.

In this personal injury action, plaintiff alleges that she was injured after being struck with  
falling ice from the building where she was employed. Defendants contend that their own  
investigation has revealed that this alleged accident went unreported to the property owners,  
managers and security until suit was filed approximately two years later; went unwitnessed by  
anyone affiliated with the property including security personnel, who monitor and patrol the  
property; and uncaptured by security cameras that constantly monitor the property including the  
plaza. (NYSCEF Doc. No. 68, ¶ 6). Defendants also maintain that plaintiff's counsel has  
represented during discovery that neither police, fire nor ambulance attended the scene.  
Defendants seek to strike plaintiff's complaint or compel plaintiff to respond to its initial and  
supplemental discovery demands seeking witness information and documents including emails  
wherein plaintiff reported the occurrence alleged in the complaint, or any of the conditions

alleged in the complaint and/or any of the conditions plaintiff alleges or will allege was a proximate cause of her injuries. (NYSCEF Doc. No. 81).

Plaintiff opposes the motion indicating that she has fully complied with defendants' discovery demands, including its supplemental discovery demand seeking eyewitness/notice witness information and is ready, willing and able to proceed with depositions. (NYSCEF Doc. No. 90). Moreover, plaintiff argues that emails and other documents that defendants seek from plaintiff would be contained on defendants' own e-mail server or otherwise maintained in hard-copy in their possession as part of the regular course of their business owning, operating and maintaining the subject premises. (NYSCEF Doc. No. 89, ¶ 16).

## DISCUSSION

“Disclosure in civil actions is generally governed by CPLR 3101 (a), which directs: [t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof. . . . The test is one of usefulness and reason.” (*Forman v Henkin*, 30 NY3d 656, 661, 70 N.Y.S.3d 157, 93 N.E.3d 882 [2018] [internal quotation marks and citations omitted]). “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court . . . .” (*Montalvo v CVS Pharm, Inc.*, 102 AD3d 842, 843, 958 NYS2d 459 [2d Dept 2013] [internal quotation marks and citations omitted]).

Pursuant to CPLR 3124, “[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . the party seeking disclosure may move to compel compliance or a response.” On a motion brought pursuant to CPLR 3124, the burden is on the party seeking the disclosure to establish a basis for the production sought. (*Rodriguez v Goodman, M.D.*, 2015 NY Slip Op 31412(U), \*5 [Sup Ct, NY

County 2015)). “[T]he request need only be appropriately tailored and reasonably calculated to yield relevant information. . . . [T]he purpose of discovery is to determine if material relevant to a claim or defense exists.” (*Forman v Henkin*, 30 NY3d at 664).


“The striking of a party’s pleadings should not . . . be imposed except in instances where the party seeking disclosure demonstrates conclusively that the failure to disclose was willful, contumacious or due to bad faith.” *Hassan v Manhattan & Bronx Surface Tr. Operating Auth.*, 286 AD2d 303, 304 (1st Dept 2001).

Here, plaintiff has responded to defendants’ supplemental discovery demands objecting to defendants’ demands as seeking attorney work product documents and indicating that plaintiff is not presently aware of any eye-witnesses by name or address to the accident or the gradual onset of her traumatic brain injury. (NYSCEF Doc. No. 82). In addition, in opposition to the motion, plaintiff’s counsel has represented that plaintiff did not send any emails or communications to defendants regarding the subject accident or the dangerous claimed condition. (NYSCEF Doc. No. 89, ¶ 19).

Based on a review of the record, defendants have not demonstrated that plaintiff has failed to respond to its discovery demands. Accordingly, defendants have failed to establish the necessary willful and contumacious to impose the severe penalty of striking plaintiff’s complaint. Moreover, the parties have participated in a remote discovery conference on December 2, 2020 setting forth dates for all party depositions, and as such that portion of defendants’ motion is resolved as moot. (NYSCEF Doc. No. 97). Accordingly, it is hereby,

ORDERED that defendants’ motion seeking to strike the complaint, to preclude plaintiff from offering evidence or to compel plaintiff to fully respond to discovery demands is denied, in accordance with this decision; and it is further

ORDERED that counsel are directed to appear for a remote status conference on February 23, 2021, at 2:30 PM.

12/3/2020		
<b>DATE</b>		<b>W. FRANC PERRY, J.S.C.</b>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE