

<b>Gonzalez v New York City Tr. Auth.</b>
2021 NY Slip Op 33076(U)
December 17, 2021
Supreme Court, Queens County
Docket Number: Index No. 700326/2021
Judge: Joseph Risi
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOSEPH RISI  
A. J. S. C.

IA PART 3

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JUDITH A. GONZALEZ, MICHELLE PARRISH and  
TANIK BETHUNE,  
  
Plaintiff,  
  
-against-

Index Number 700326/2021

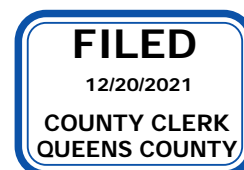
Motion Date: April 6, 2021

Motion Seq.: #3

NEW YORK CITY TRANSIT AUTHORITY, MV  
PUBLIC TRANSPORTATION, INC., MV  
TRANSPORTATION, INC., ACCESS-A-RIDE,  
RINGCHELL THEAGENE, and "JOHN DOE",

Defendants.  
-----X

**DECISION/ORDER**



The following EF numbered papers read on the motion by Plaintiff Judith Gonzalez<sup>1</sup> for an Order, *inter alia*, compelling defendants to produce a non-party witness and an authorization to obtain the Defendant-driver Ringchell Theagene's cell phone records.

Papers  
Numbered

Notice of Motion, Affirmation in Support, Exhibits, and Service..... EF 5 – 27  
Affirmation in Opposition, Exhibits and Service..... EF 4

Upon the foregoing papers, this motion is determined as follows:

Plaintiff Gonzalez commenced this action by filing a summons and verified complaint on December 6, 2017. Defendants interposed an answer dated March 23, 2018. This matter was consolidated for joint trial and joint discovery pursuant to Order dated June 6, 2018. Plaintiff Gonzalez seeks damages for injuries sustained as a passenger on an Access-A-Ride vehicle on January 22, 2017 on Cross-Bay Boulevard at or near its intersection with Liberty Avenue, Queens County, City and State of New York.

Plaintiff now moves to compel defendants to produce a non-party witness and an authorization to obtain the cell phone records for Defendant-driver Ringchell Theagene ("Theagene").

Generally, “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action” (CPLR §3101). The terms “material and necessary” in this statute “must ‘be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity’” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, [1968]). However, a party is “not entitled to unlimited, uncontrolled, unfettered disclosure” (*Geffner v Mercy Med. Ctr.*, 922 NYS2d 470 [2d Dept 2011]). The burden is on the party seeking disclosure to demonstrate that the request will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims (*Forman v Henkin*, 30 N.Y.3d 656, 661 [2018] see *Quinones v 9 E. 69th St., LLC*, 18 N.Y.S.3d 106, 108 [2015]). “[T]he supervision of discovery is generally left to the trial court's broad discretion” (*Geffner*, at 998 [2d Dept 2011]), and “each request must be evaluated on a case-by-case basis with due regard for the strong policy supporting open disclosure” (*Forman*, at 662 [2018] quoting *Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 74 [2000]).

Plaintiff Gonzalez alleges that Defendant Theagene was on her cell phone at the time of the accident, thereby causing the impact, whereas Defendant Theagene alleges that she was cut off by another vehicle. Additionally, Plaintiff Gonzalez seeks the deposition of non-party witness, Benjamin Blakeney, based on his written incident report allegedly containing Defendant Theagene’s account that she was not speaking to anyone on the phone and the omission of Plaintiff Gonzalez’s

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<sup>1</sup> The Court notes that Counsel for Plaintiff Gonzalez fails to identify her client throughout the motion.

statement to the contrary.

“A party seeking additional depositions has the burden of demonstrating (1) that the representatives already deposed had insufficient knowledge or were otherwise inadequate, and (2) there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case” (*Monti v Shaw*, 183 A.D.3d 722 [2d Dept 2020] quoting *O'Brien v Village of Babylon*, 153 AD3d [2d Dept 2017]). Plaintiff Gonzalez has failed to demonstrate that Defendant Theagene had insufficient knowledge or that her deposition was inadequate. Moreover, any testimony Plaintiff Gonzalez seeks Mr. Blakeney to testify to at deposition that were relayed to him by Defendant Theagene, Plaintiffs Gonzalez and Tanika Bethune would be pure hearsay.

Plaintiff Gonzalez also seeks an authorization for Defendant Theagene's cell phone records for the date of the accident. Plaintiffs Gonzalez and Bethune testified at their depositions that Defendant Theagene was talking on her cell phone immediately prior to the accident, whereas Defendant Theagene testified at her deposition that she was cut off by another vehicle, but plaintiffs Gonzalez and Bethune testified there was no other vehicle. As the parties offer conflicting accounts as to whether Defendant Theagene was using her cell phone at the time of the accident, in violation VTL §§ 1225-c and 1225-d, Plaintiff Gonzalez's motion is granted the extent that it is hereby

**ORDERED** that Defendant Theagene provide plaintiff with authorization to obtain her cell phone records on January 22, 2017 between the hours of 5AM-11AM EST within 30 days of service of this Order with Notice of Entry; and it is further

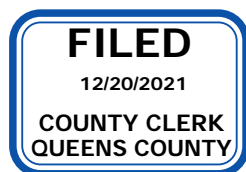
**ORDERED** that the plaintiff's time to file the Note of Issue is extended to February 25, 2022;


**ORDERED** that the remaining branch of the motion to convert this matter to e-file is denied as moot; and it is further

**ORDERED** that plaintiff shall serve defendants with a copy of this Order, together with Notice of Entry, within 15 days of the filing of this order by the Queens County Clerk.

This is the decision and Order of the Court.

Date: December 17, 2021



  
HON. JOSEPH RISI, A. J. S. C.