

Pizzo v Lustig

2021 NY Slip Op 33889(U)

December 10, 2021

Supreme Court, Kings County

Docket Number: Index No. 508087/2018

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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ANTHONY PIZZO,

Index No.: 508087/2018
Motion Date: 10-4-21
Mot. Seq. No.: 6

Plaintiff,

-against-

DECISION/ORDER

NACHI LUSTIG,

Defendant.
-----X

Upon the following e-filed documents, listed by NYSCEF as item numbers 126-127, 148-157, 161-163, 168-173, 175-176, the cross-motion is decided as follows:

In this personal injury action involving a two vehicle collision on the Belt Parkway that occurred on September 7, 2017 in Brooklyn, NY, plaintiff ANTHONY PIZZO moves pursuant to CPLR §§ 3101(i) and 3126, to preclude Defendant NACHI LUSTIG from proffering any surveillance materials taken of Plaintiff on March 4, 2020, June 25, 2020, July 14, 2020, December 16, 2020 and/or any other surveillance materials of the Plaintiff, which he alleges were not exchanged pursuant to the Court's orders. Plaintiff argues that defense counsel willfully and contumaciously disregarded two court orders and intentionally withheld what was to be disclosed under CPLR 3101(i), warranting sanctions.

In opposition, defendant argues that the subject motion is improperly labeled a “cross-motion” and should be denied since: 1) plaintiff is impermissibly moving against his own motion and 3) plaintiff misstated the rule in CPLR 2214(b) and provided only seven days to file an affidavit in opposition. Defendant further claims that full disclosure of all surveillance materials and reports was exchanged with plaintiff on March 17, 2021 and was later included in defendant’s opposition to plaintiff’s motion for summary judgment (mot. seq. #3 filed on January 27, 2021).¹

¹ Plaintiff’s summary judgment motion was denied on the issue of threshold by decision/order dated November 8, 2021.

Although generally, a cross motion is an improper vehicle to seek affirmative relief when moving against a party's own motion, in this instance, a technical defect of this nature may be disregarded where, as here, there is no prejudice, and the opposing party had ample opportunity to be heard on the merits of the relief sought (*see Hennessey-Diaz v City of New York*, 146 A.D.3d 419, 44 N.Y.S.3d 404, 2017 N.Y. App. Div. LEXIS 31, 2017 NY Slip Op 00025; *Daramboukas v. Samlidis*, 84 A.D.3d 719, 922 N.Y.S.2d 207, 2011 N.Y. Slip Op. 03796). Thus, the court will entertain the motion.

After reviewing the papers submitted in support, opposition and reply to the motion, the court finds that the plaintiff did not demonstrate how the alleged late disclosure of the surveillance materials prejudiced the plaintiff in any way. Further, the record does not demonstrate that the alleged late disclosure was willful and contumacious.

Accordingly, it is hereby

ORDERED that the motion is in all respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: December 10, 2021



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020