

Contreras v City of New York

2023 NY Slip Op 33112(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 161063/2019

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

-----X

INDEX NO. 161063/2019

ROGER J. CONTRERAS,

MOTION SEQ. NO. 003

Plaintiff,

- v -

THE CITY OF NEW YORK, THE DEPARTMENT OF
EDUCATION, and NEW YORK CITY SCHOOL
CONSTRUCTION AUTHORITY

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 66, 69, 70, 71, 72, 73, 74

were read on this motion to/for STRIKE PLEADINGS.

In this Labor Law action, plaintiff moves, pursuant to CPLR 3126, to strike defendants' pleadings for failing to comply with discovery requirements. Alternatively, he moves, pursuant to CPLR 3124, to compel defendants to produce outstanding discovery.

I. Factual and Procedural Background

This cases arises from an incident on June 25, 2019, in which plaintiff was allegedly injured after he was struck by a piece of falling material while working at a construction site located at 509 W. 129th Street in Manhattan, which were allegedly owned and operated by defendant The City of New York (NYSCEF Doc No. 1). Plaintiff commenced this action against defendants in November 2019 alleging claims of common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6) (Doc No. 1). Defendants joined issue by their answer dated January 6, 2020, denying all substantive allegations of wrongdoing and asserting various affirmative defenses (Doc No. 7).

Plaintiff now moves for an order striking defendants' answer for failing to comply with their discovery requirements or, alternatively, compelling defendants to provide the outstanding discovery items (Doc Nos. 59-61, 74),¹ which defendants oppose (Doc No. 69). Between plaintiff's reply papers and discussions with counsel at a conference with the Court regarding the motion, it was determined that much of the discovery items sought by plaintiff had been provided, with only a few items still in dispute. Those disputed items are: (1) various witness names and/or last known addresses, (2) a "Hazard/Safety Deficiency Report" completed by Whitestone Construction, or a *Jackson* affidavit averring that one does not exist, and (3) safety open observation reports made within the 60 days prior to plaintiff's accident. Unable to resolve the dispute at the conference, the motion was deemed fully submitted as to the above items.

II. Legal Analysis and Conclusions

A. Defendants' Witness Information

When a party identifies witnesses during the course of discovery, the opposing party is entitled to the names and last known addresses of such witnesses (*see Onihude v City of New York*, 178 AD3d 499, 499 [1st Dept 2019] ["Defendants satisfied their discovery obligation by providing the witness's last known address and telephone number during discovery" (citations omitted)]; *Rodriguez v United Bronx Parents, Inc.*, 70 AD3d 492, 492-492 [1st Dept 2010] [finding defendant willfully violated discovery requirements by failing to provide last known addresses of witnesses]; Patrick M. Connors, 2018 Prac Commentaries, McKinney's Cons Laws of NY, CPLR C3101:41).

¹ While plaintiff's motion was pending, in a somewhat confusing procedural move, he filed a note of issue and a certificate of readiness indicating that discovery was complete and the matter was ready for trial (Doc No. 67). However, defendants have not sought to vacate the note of issue, and their time to do so has expired.

Here, in response to plaintiff's discovery demand for names and addresses of all witnesses to his accident, defendants "further identif[ied] the NYC SCAP project officers, inspectors and project managers, Whitestone Construction Project Officers, Project Managers, Foreman, Supervisors, Laborers . . . including but not limited to Wilson Peguero, [and] Mohammed Asraf" (Doc No. 70 at 5). However, defendants failed to provide last known addresses for Peguero and Asraf, and failed to provide names and addresses for the individuals encompassed by the various officer and manager titles mentioned in their response. Therefore, defendants failed to comply with their discovery requirements (*see Onihude*, 178 AD3d at 499).

B. Hazard/Safety Deficiency Report and Safety Open Observation Reports

It is well established that "[a] party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is material and necessary—i.e., relevant—regardless of whether discovery is sought from another party or a nonparty" (*Forman v Henkin*, 30 NY3d 656, 661 [2018] [internal quotation marks and citations omitted]; *see* CPLR 3101 [a]).

Plaintiff has established that the Hazard/Safety Deficiency Report and the safety open observation reports are relevant to his claims. Given that plaintiff asserted claims for common-law negligence and violations of Labor Law § 200, the issue of defendants' notice is critical to a determination of their liability (*see e.g. McKinney v Empire State Dev. Corp.*, 217 AD3d 574, 575 [1st Dept 2023] [denying summary dismissal of common-law negligence and Labor Law § 200 claims because questions of fact existed about defendant's notice]). The Hazard/Safety Deficiency Report and the safety open observation reports potentially contain information relevant to the issue of defendants' notice. Therefore, plaintiff is entitled to such documents.

The parties remaining contentions are either without merit or do not need to be addressed given the findings set forth above.

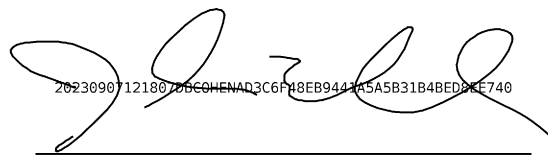
Accordingly, it is hereby:

ORDERED that plaintiff's motion is granted to the extent that defendants The City of New York, The Department of Education, and New York City School Construction Authority are directed to supplement their response to plaintiff's discovery demands within 30 days after plaintiff's service of a copy of this order with notice of entry upon defendants by providing:

- the last known addresses of Wilson Peguero and Mohammed Asraf;
- the names and last known addresses for the witnesses identified as “the NYC SCAP project officers, inspectors and project managers, Whitestone Construction Project Officers, Project Managers, Foreman, Supervisors, [and] Laborers” in defendants' July 28, 2023, response to plaintiff's combined discovery demands (Doc No. 70);
- a copy of the completed Whitestone Construction Corp. Hazard/Safety Deficiency Report, like the one provided by defendants in their July 28, 2023, response to plaintiff's post-EBT demands (Doc No. 71), or a *Jackson* affidavit if a completed report does not exist; and
- safety open observation reports, like the one provided by defendants in their August 21, 2023, response to plaintiff's good faith letter (Doc No. 73), for the period of 60 days prior to plaintiff's accident;

and it is further

ORDERED that the parties shall appear for a status conference in person at 71 Thomas Street, Room 305, on October 31, 2023, at 10:00 a.m.



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9/7/2023
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: