

**Alvarado Guano v 20125 Owners Corp.**

2023 NY Slip Op 33160(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 159124/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12**

*Justice*

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INDEX NO. 159124/2021

JORDY ALEXANDER ALVARADO GUANO,

MOTION DATE 05/25/2023

Plaintiff,

MOTION SEQ. NO. 002

- v -

20125 OWNERS CORP., BRABERT REALTY CO., 201  
EAST 25 LLC, SKYBRIDGE RESTORATION INC.

**DECISION AND ORDER  
ON MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for

DISCOVERY

This is a Labor Law action to recover damages for injuries allegedly sustained by plaintiff Jordy Alexander Alvarado Guano (plaintiff) as a result of an accident which occurred on September 29, 2021 at 201 East 25<sup>th</sup> Street, New York, New York.

The owner of the building, 20125 Owners Corp. (defendant) served a notice to admit dated November 2, 2022 demanding that plaintiff admit or deny that "at some time between September 28, 2021 and present, plaintiff, Jordy Alexander Alvarado Guano, traveled to Ecuador." Defendant also asserts that plaintiff has failed to respond to its August 23, 2022 discovery demands, which include a demand for copies of plaintiff's current and expired passports.

Plaintiff moves pursuant to CPLR 3103 for a protective order against such notice to admit and, pursuant to CPLR 3123, an order vacating same. Alternatively, plaintiff moves for an order pursuant to CPLR 3103 (b) granting plaintiff an extension of time to respond to said notice to admit.

Defendant 20125 Owners Corp. opposes the motion and cross-moves for an order pursuant to CPLR 3126 striking plaintiff's complaint for failing to provide discovery or, alternatively, pursuant to

[\* 1]

CPLR 3124 compelling plaintiff to comply with discovery demands by a date certain, including a response to the subject notice to admit and the August 23, 2022 demands.

Oral argument was held on May 25, 2023, at which counsel for all parties were present. The Court now issues its decision.

Plaintiff argues that the notice to admit is improper because the appropriate vehicle for discovery of the information sought is a deposition. Plaintiff maintains that defendants cannot convert a notice to admit into a discovery vehicle which supplants the role of a deposition. In turn, defendant argues that said demands and the subject notice to admit are relevant and necessary to this matter, as plaintiff alleges that the subject accident has incapacitated him from employment and impacted his normal life activities.

CPLR 3123 provides that a party may serve a written request for admission of the truth of matters of fact as to which the party requesting the admission reasonably believes there can be no substantial dispute at trial, and which are within the knowledge of such other party. A notice to admit that “seeks admissions on matters which go to material or ultimate issues in the case” are improper. *National Union Fire Ins. Co. of Pittsburgh, Pa. v Allen*, 232 AD2d 80 (1st Dept 1997).

Defendant’s notice to admit seeks admission or denial of a matter of fact within the knowledge of plaintiff and is one which there can be no substantial dispute at trial. Through the notice to admit, defendant seeks “uncontroversial, ‘clear-cut matters of fact’ that are within plaintiff’s knowledge” *Smith v Brown*, 61 Misc 3d 681, 685 (Sup Ct, Bronx County 2018). Further, it does not seek admission on ultimate issues in the case, which is based on a workplace injury. The fact that the matters on which defendant “...seeks admission *could be* explored at deposition does not take them out of the ambit of the notice to admit.” *Id.* Thus, the aspect of plaintiff’s motion seeking a protective order under CPLR 3103 (a) vacating the notice to admit is denied.

Therefore, plaintiff is directed to respond to the subject notice to admit within 20 days, pursuant to CPLR 3124.<sup>1</sup> The Court declines to strike plaintiff's complaint at this time, as defendant has not demonstrated that plaintiff's repeated to respond to defendants' discovery demands was willful or contumacious. *See Pimental v City of New York*, 246 AD2d 467, 468 (1st Dept 1998).

However, with respect to defendant's August 23, 2022 demands, the Court finds that plaintiff need not provide any further responses. Specifically, plaintiff need not provide copies of his passports or asylum documentation, as they are unnecessary and irrelevant to this matter at this point.

Accordingly, it is hereby

ORDERED that plaintiff Jordy Alexander Alvarado Guano's motion is granted only as to plaintiff's request for an extension of time to respond to the November 2, 2022 notice to admit, and is otherwise denied; and it is further

ORDERED that plaintiff is directed to provide said response within 20 days from the entry of this decision and order; and it is further

ORDERED that plaintiff need not provide further responses to the August 23, 2022 demands, and plaintiff need not provide copies of his passports or asylum documentation; and it is further

ORDERED that the cross-motion of defendant 20125 Owners Corp. is granted only to the extent of compelling plaintiff to respond to the November 2, 2022 notice to admit within 20 days from the entry of this decision and order, and is otherwise denied; and it is further

ORDERED that the parties shall jointly file a proposed discovery stipulation and order with respect to all outstanding discovery on or before September 25, 2023, with a courtesy copy to be e-mailed to [riwohl@nycourts.gov](mailto:riwohl@nycourts.gov); and it is further

<sup>1</sup> Following the service of the response to the notice to admit, further inquiry regarding plaintiff's travels would be more suitable for plaintiff's deposition, which has not yet occurred.

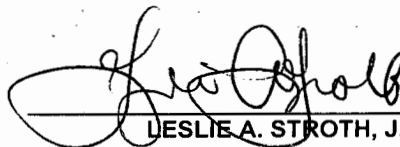
ORDERED that, should no accord be reached as to the outstanding discovery, the parties shall file a joint letter to the court on or before September 25, 2023, outlining the discovery issues raised, with a courtesy copy to be e-mailed to [riwohl@nycourts.gov](mailto:riwohl@nycourts.gov); and it is further

ORDERED that the matter shall be scheduled for a control date of September 26, 2023, with no appearance required.

This constitutes the decision and order of the Court.

9/7/2023

DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: