

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Kemp v. 1000 Broadway, LLC

2022 NY Slip Op 02121 (N.Y. Ct. App. 2022) · No. 2020-07646 · Decided March 30, 2022

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the plaintiff's motion to preclude the defendants from offering video surveillance footage at trial. The court held that the motion was properly denied because the plaintiff failed to submit the required affirmation of good faith concerning efforts to resolve the disclosure dispute under CPLR 3101(i).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Reinaldo E. Rivera, J.; Paul Wooten, J.; William G. Ford, J.
JURISDICTION	New York
DECIDED	March 30, 2022
DOCKET	2020-07646
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying her motion, in effect pursuant to CPLR 3126, to preclude the defendants from offering video surveillance footage at trial.
PRECEDENTIAL VALUE	published
PARTIES	Constance Kemp v. 1000 Broadway, LLC

TOPICS

- discovery dispute
- civil procedure
- appellate procedure
- evidence
- personal injury

PRACTICE AREAS

- civil procedure
- personal injury
- torts

QUESTIONS PRESENTED

1. Whether the plaintiff's disclosure-related motion to preclude video surveillance footage was properly denied when she failed to submit the required affirmation that counsel had conferred in good faith with opposing counsel.

HOLDINGS

1. A motion relating to disclosure must be accompanied by an affirmation from moving counsel attesting that counsel conferred with opposing counsel in a good-faith effort to resolve the issues raised by the motion. Because the plaintiff submitted no such affirmation, the Supreme Court properly denied her motion to preclude the video surveillance footage.

KEY QUOTATIONS

"Pursuant to 22 NYCRR 202.7(a)(2), a motion relating to disclosure must be accompanied by an affirmation from moving counsel attesting 'that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion'"

FACTUAL BACKGROUND

Constance Kemp brought an action for personal injuries allegedly sustained when she tripped and fell. The defendants possessed video surveillance footage depicting Kemp. Kemp sought to prevent the defendants from offering the footage at trial, asserting that they had failed to comply with disclosure obligations under CPLR 3101(i).

PROCEDURAL HISTORY

The plaintiff commenced a personal-injury action after allegedly tripping and falling. She moved to preclude video surveillance footage based on the defendants' alleged failure to comply with disclosure obligations under CPLR 3101(i). The Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Hubbell, Inc. v. Lazy Swan Golf & Country Club LLC, 187 A.D.3d 1448, 1450
- Belle-Fleur v. Desriviere, 178 A.D.3d 993, 994-995
- Perez v. Stonehill, 121 A.D.3d 960, 961

OPINION

PER CURIAM.

Kemp v 1000 Broadway, LLC (2022 NY Slip Op 02121) Kemp v 1000 Broadway, LLC 2022 NY Slip Op 02121 Decided on March 30, 2022 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is

uncorrected and subject to revision before publication in the Official Reports. Decided on March 30, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

REINALDO E. RIVERA PAUL WOOTEN WILLIAM G. FORD, JJ. 2020-07646 (Index No. 514687/16) [*1]Constance Kemp, appellant, v1000 Broadway, LLC, respondent, et al., defendants. Subin Associates, LLP (Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac and Kenneth J. Gorman], of counsel), for appellant. Morrison Mahoney LLP, New York, NY (Demi Sophocleous and Gerardo L. Espinoza of counsel), for respondent.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated September 9, 2020. The order denied the plaintiff's motion, inter alia, in effect, pursuant to CPLR 3126 to preclude the defendants from offering video surveillance footage of the plaintiff at trial.

ORDERED that the order is affirmed, with costs. The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained when she tripped and fell. Thereafter, the plaintiff moved, inter alia, in effect, pursuant to CPLR 3126 to preclude the defendants from offering video surveillance footage of the plaintiff at trial based upon the defendants' purported failure to comply with their disclosure obligations under CPLR 3101(i).

In an order dated September 9, 2020, the Supreme Court denied the plaintiff's motion. The plaintiff appeals. Pursuant to 22 NYCRR 202.7(a)(2), a motion relating to disclosure must be accompanied by an affirmation from moving counsel attesting "that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion" (Hubbell, Inc. v Lazy Swan Golf & Country Club LLC, 187 AD3d 1448, 1450).

Here, the plaintiff failed to submit an affirmation of good faith indicating that efforts had been made to resolve the CPLR 3101(i) related discovery issue prior to engaging in motion practice (see 22 NYCRR 202.7[a][2]; Belle-Fleur v Desriviere, 178 AD3d 993, 994-995; Perez v Stonehill, 121 AD3d 960, 961).

The plaintiff's remaining contentions either need not be reached in light of our determination or are without merit. Accordingly, the Supreme Court properly denied the plaintiff's motion, inter alia, in effect, pursuant to CPLR 3126 to preclude the defendants from offering video surveillance footage of the plaintiff at trial. BARROS, J.P., RIVERA, WOOTEN and FORD, JJ., concur.

ENTER: Maria T. Fasulo Clerk of the Court