

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