

PART ~~22~~ 11

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX:

Case Disposed   
 Settle Order   
 Schedule Appearance

MARTINEZ, BARTOLO

Index No. 0300941/2012

-against-

Hon. ~~NORMAN~~

LINCOLN CENTER

LAURA G. DOUGLAS

Justice.

X Justice, Supreme Court


The following papers numbered 1 to (7) Read on this motion, MISCELLANEOUS  
 Noticed on October 31 2013 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	(1)	
Answering Affidavit and Exhibits	(2)	
Replying Affidavit and Exhibits	(5)-(7)	
<u>Answering</u> Affidavits and Exhibits	(3)	
Pleadings - Exhibit <u>Answering Aff. and Exh.</u>	(4)	
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion by plaintiff is decided in accordance with the attached memorandum Decision/Order.

Motion is Respectfully Referred to:  
 Justice: \_\_\_\_\_  
 Dated: \_\_\_\_\_

Dated: 3/11/15

Hon.   
~~Norman~~ J.S.C.  
 LAURA G. DOUGLAS  
 Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX PART 11

-----X  
MARTINEZ, BARTOLO

Plaintiff(s),

- against -

LINCOLN CENTER

Defendant(s).  
-----X

Index No. 300941/2012

Calendar No.

**DECISION/ORDER**

**Present:**

**HON. LAURA G. DOUGLAS  
J.S.C.**

Motion by plaintiff for an order imposing sanctions against defendants and/or their counsel, for discovery, and for related relief, is decided as follows:

This is a personal injury action in which plaintiff, a laborer employed by third-party defendant Commodore Construction Corp. (Commodore), allegedly slipped and fell on debris in the underground garage at Lincoln Center in Manhattan. Turner Construction Company was the general contractor and the other defendants owned and managed the location where the accident took place. Defendants Lincoln Center for Performing Arts, Inc. and Lincoln Center Development Project, Inc. (Lincoln Center) appeared at a deposition on September 12, 2013 by their witness, Peter Flamm, who was the Senior Director of Operation Facilities and Public Spaces (Exhibit B, p.8: 10-12). Plaintiff argues that defendants Lincoln and Quik Park West 62<sup>nd</sup> St. LLC (Quik-Park) and/or their counsel should be sanctioned for their behavior during this deposition, in that they violated Part 221 of the Uniform Rules for the Conduct of Depositions.

§§221.1, 221.2 and 221.3 of the Uniform Rules provide as follows:

**§221.1. Objections at Deposition.**

(b) Speaking objections restricted. Every objection raised during

a deposition shall be stated succinctly and framed as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

**§221.2. Refusal to answer when objection is made.**

1. A deponent shall answer all the questions at a deposition, except:

- (i) to preserve privilege or right of confidentiality;
- (ii) to enforce a limitation set forth in an order of a court; or
- (iii) when the question is plainly improper and would, if answered cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefore. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

**§221.3. Communication with the deponent.**

An attorney shall not interrupt the deposition for the purpose of communicating with deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and in such event, the reason for the communication shall be stated for the record succinctly and clearly.

The attorney for defendant Lincoln Center, Ilysa Cholewa, Esq., advised her client not to answer on the following occasion (Exhibit B, p.26 lines 7-11). However, the witness was later permitted to answer (p.28 lines 16-21). There were also two occasions when this attorney made speaking objections, in violation of §221.1 (b) (p.66 lines 3-16, p.75 lines 14-23). Ms. Cholewa interrupted the deposition of her witness, by announcing that she "was just going to talk to him outside for a second", without obtaining the consent of all parties, or for

the purpose of determining whether a question should be answered, in violation of §221.3.

The Court finds that these violations in their number and variety constituted a serious interference with plaintiff's ability to conduct the deposition. In addition, the Court notes Ms. Cholewa's response to plaintiff's statement that she had made an improper objection was, "I don't care if it is an improper objection" (p.66 lines 15-16).

Accordingly, pursuant to 22NYCRR §130-1.1, the Court imposes sanctions on Ms. Cholewa in the amount of \$250.00 dollars, payable to The Lawyer's Fund for Client Protection, 119 Washington Avenue, Albany, New York 12210, within thirty (30) days of service of this order with notice of entry. Proof of payment shall be filed with the Bronx County Clerk within thirty (30) days thereafter.

The Court does not impose sanctions on the attorney for Quik Park, Jack Mullen, Esq. While Mr. Mullen, did insert the words "if any" after a question by plaintiff's attorney (p.35 line 20), and engaged in colloquy with plaintiff's attorney that could be interpreted as being insulting, taken as a whole it is not deserving of sanction.

The Court directs that all counsel familiarize themselves with Part 221 of the Uniform Rules and that all future depositions in this case take place at this Courthouse.

Inasmuch as plaintiff does not seek a further deposition of defendant Lincoln Center, that portion of the motion seeking payments for the cost of the deposition is denied.

The other discovery demanded by plaintiff in this motion has been provided, except for plaintiff's demand for photographs taken after the accident. Defendants are directed to provide plaintiff with post-accident photographs within thirty (30) days of service of a copy of

this order with notice of entry, only to the extent that any such photographs show the condition of the accident site and/or the plaintiff at the time of the accident.

Plaintiff's protective order seeking to limit the deposition of plaintiff by third party defendants is granted, in conformity with Gibson v. Transact International, Inc., 133 AD2d 807 (2<sup>nd</sup> Dept. 1987). Third party defendants may depose plaintiff limited to any matters not adequately covered by prior depositions conducted by the defendants.

Scheduling of the remaining depositions and an extension of the Note of Issue shall be determined at the next conference of this case.

This constitutes the decision and order of the Court.

Dated: 3-11-15  
Bronx, New York

  
\_\_\_\_\_  
Hon. Laura G. Douglas, J.S.C.