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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. RALPH P. FRANCO, Justice

TRIAL/IAS, PART 11

DOROTHY THOMAS

Plaintiff(s),

-against-

INDEX No.: 15939 ~~2~~/00
MOTION SEQ. NO: 3

MACY'S EAST, INC.,

Defendant(s).

-----X

MACY'S EAST INC. s/h/a MACY'S
CORPORATION,

Third- Party Plaintiffs,

-against-

JOSEPH ELETTO TRANSFER, INC. and
KNICKERBOCKER BED COMPANY

Third-Party Defendants,

-----X

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause....._____
- Answering Affidavits....._____
- Replying Affidavits....._____

Motion by attorney for plaintiff for an order compelling defendant Macy's East Inc. to provide plaintiff copies of the policy and procedure manuals ["in-store" and "outside store"] that were in effect in August, 2000, regarding the Macy's East Inc. furniture store in Carle Place, New York; the Macy's store policy in effect August, 2000 regarding injuries to customers; any other

documents relating to Macy's policies with respect to customer's injuries in effect August, 2000; any written, accident, or incident reports pertaining to the plaintiff including but not limited to, those made or sent to Mr. Conway, or in the alternative, precluding defendant Macy's East Inc. from offering any evidence upon the trial of this action for its failure to produce the requested documents; and compelling Third Party Defendant Joseph Eletto Transfer Inc. to provide plaintiff with copies of the "independent contractor" agreement between the third party defendant and the driver named "Jose Sosa" who delivered the bed and frame to the plaintiff Dorothy Thomas; copies of any application, resume, payroll records, Department of Transportation records, New York State Driver's License records, current address and last known address for Jose Sosa, the driver who delivered the bed and frame to the plaintiff; copies of any written records, pertaining to any "helper" employed or used by Jose Sosa in delivering the bed to the plaintiff; copies of any "driver's daily report" for Jose Sosa for the day of the delivery of the bed and frame to the plaintiff; copies of any training materials provided to the third-party defendant, by the defendant Macy's (or Federated Stores), in effect for August, 2000 concerning the delivery and set-up of beds and bed frames at Macy's customer's residence; or in the alternative, precluding third party defendant Joseph Eletto Transfer, Inc. from offering any evidence upon the trial of this action for its failure to produce the requested documents is determined as hereinafter set forth.

Defendant /third-party Plaintiff Macy's East Inc. has replied to

discovery demand with regard to policy and procedure documents for the preparation of accident reports on two separate occasions both in the form of a standard discovery response, as well as securing the affidavit of Mr. Parola. The portion of plaintiff's motion that pertains to defendant third -party plaintiff is moot.

Attorney for third-party defendant Eletto Transfer, Inc. has submitted a response to Notice for Discovery and Inspection that states "1-6. The third-party defendant, Joseph Eletto Transfer, Inc. is not currently in possession of the requested materials. If same becomes available it will be provided under separate cover." The portion of discovery that pertains to third-party defendant Joseph Eletto Transfer, Inc. is moot. In limine motions and requests for Missing Documents Charges (PJI 1:77) are subject to the discretion of the trial judge. If not yet done so, arrangements should be made for an examination of the bed frame at issue, as agreed to and stipulated by all counsel at the Compliance Conference on Sept. 4, 2002.

This action is certified for trial and plaintiff is directed to file a Note of Issue along with a copy of plaintiff's birth certificate to request a trial preference.

A copy of this order must accompany the Note of Issue.

Dated: March 31, 2003

15939.3



Hon. Ralph P. Franco, J. S. C.

