

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
LILLIAN MANIGAULTE,

Plaintiff,

-against-

ROBERT PASSARETTI, JR., ANNE-MARIE
PASSARETTI and/or ANNE MARIE PASSARETTI and/or
ANNEMARIE PASSARETTI and/or ANNE M..
PASSARETTI and/or ANNE PASSARETTI and/or ANNE-
MARIE MADDALENA and/or ANNEMARIE
MADDALENA and/or ANNE M. MADDALENA and/or ANNE
MADDALENA and RUDY PASSARETTI, JR. and/or RODOLFO
PASSARETTI, JR. and/or R. PASSARETTI, JR. and/or RUDY
PASSARETTI and/or RODOLFO PASSARETTI and/or
RUDOLFO PASSARETTI and/or R. PASSARETTI

Defendants.

SCAN
MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 11
Index No.: 9507/08
Motion Seq. Nos.: 03, 04 & 05

AMENDED
DECISION AND ORDER

Papers Read on this Motion:

| | |
|--|----|
| Defendant's Order to Show Cause | 03 |
| Plaintiff's Notice of Motion | 04 |
| Defendant's Notice of Cross-Motion & Opposition to Plaintiff's Notice of Motion | 05 |
| Plaintiff's Reply Affirmation in Support of Cross-Motion and in Opposition to Defendant's Cross Motion | xx |
| Plaintiff's Affirmation in Reply | xx |
| Defendant's Reply | xx |

The parties in this action are Plaintiff Lillian Manigaulte and defendants Robert Passaretti, Jr and his wife Anne Marie Passaretti. Robert Passaretti concedes that he has used the names Rodolfo Passaretti, Jr., Rodolfo Passaretti, Rudy Passaretti Jr., Rudy Passaretti, R. Passaretti, Jr., R. Passaretti, Rudolfo Passaretti and Rudolfo Passaretti Jr. Based on this concession, the Court's reference to any one of Mr. Passaretti's aliases are to be considered as references to all of his aliases.

In motion sequence number three, the defendants move for an order dismissing the plaintiff's complaint against "Anne-Marie Passaretti and/or Anne Marie Passaretti and/or Annemarie Passaretti and/or Anne M. Passaretti and/or Anne Passaretti and/or Anne-Marie Maddalena and/or Ann Marie Maddalena and/or Annemarie Maddalena and/or Anne M. Maddalena and/or Anne Maddalena". The aforementioned names were added to the caption to identify Mr. Robert Passaretti Jr.'s wife. The names were added after the plaintiff did an internet search to determine all of the names ever used by Mr. Passaretti's wife and moved the Court for permission to add same. The Court will refer Mr. Passaretti's wife as Mrs. Passaretti or Anne-Marie Passaretti which is how she signed an affidavit related to this case on August 9, 2010. The affidavit was included in the defendant's motion papers as an exhibit regarding ownership of the vehicle.

In motion sequence number four, the plaintiff moves for an order denying defendant's application to dismiss the complaint against Defendant "Anne Marie Passaretti"; lifting the stay on the EBT of Ms. Passaretti and setting a date certain for the commencement of her Examination Before Trial; allowing the Plaintiff to Amend the Complaint, *nunc pro tunc*, to the date of filing to add proposed defendants Rodolfo Passaretti Sr. a/k/a Robert Passaretti (Mr. Robert Passaretti Jr.'s father) and Pool Passions and deem service by mail on Defense Counsel of the attached Third Verified Amended Complaint to be service on those proposed defendants; ordering a further Examination Before Trial of Rudy Passaretti Jr. on the issue of his employment at the time of the incident and ownership of the subject vehicle including ownership by Rodolfo Passaretti, Sr.; ordering defendants to serve a reply in response to plaintiff's Notice to Produce dated March 9, 2011 within 20 days and in advance of the EBT of Ms. Passaretti and the further EBT of Rudy Passaretti, Jr. and extending plaintiff's time to file a Note of Issue until September 16, 2011.

In motion sequence number five, the Defendant Robert Passaretti, Jr. cross-moves for a protective order, pursuant to CPLR §3103, as to plaintiff's March 9, 2011 Notice to Produce.

The parties were involved in an automobile accident on Sunday, April 30, 2006. According to the plaintiff, the accident occurred when the motor vehicle she was driving slowed down in order to turn right into a parking lot and was struck from behind by a motor vehicle

operated by defendant Robert Passaretti, Jr. The plaintiff claims that she suffered serious injuries as a result of the accident. The plaintiff was granted summary judgment against Robert Passaretti, Jr. on the issue of liability by decision and order of this Court dated July 10, 2010.

Plaintiff's counsel served a Notice to Produce dated March 9, 2011 seeking various items regarding defendant Robert Passaretti Jr's employment and income. Mr. Passaretti argues that the demands are patently improper based upon his undisputed testimony that he was not within the course of his employment at the time of the subject accident. He further argues that the plaintiff's recent affidavit is a fabrication in that for the first time in three years, the plaintiff "recalls" seeing him in work clothes and being told by him that he was coming from a job. In support of his position that he was not working, Mr. Passaretti has provided information from his insurance company showing that he carries business insurance on a seasonal basis. To substantiate his position, Mr. Passaretti refers to the information defendants supplied the plaintiff from Libardi Insurance Agency which indicated the name of Passaretti's business, relevant policy and declaration sheet, thereby satisfying the plaintiff's demand. The information from Libardi Insurance Agency also reveals that the policy, held by Rudy Passaretti was cancelled on January 1, 2006 for non payment and was later reinstated to Rudy Passaretti on May 30, 2006. Counsel for the defendants also objects to plaintiff's request for a further deposition of Mr. Passaretti. Mr. Passaretti claims that a limited deposition was supposed to occur pursuant to the directive of the Court. The plaintiff refused to schedule the deposition and instead made an application to the Court for further Discovery. Based on the plaintiff's refusal to schedule the deposition, defendant considers the deposition waived.

Plaintiff argues that the defendant Mr. Passaretti admitted in his Answer that he was the registered owner of the 2002 GMC 2500 but denied any knowledge or information sufficient to form a belief as to whether he was the record title holder of the 2002 GMC 2500. Additionally, at his deposition Mr. Passaretti testified that he did not know who was the title holder of the vehicle. During the course of discovery, the defendants provided a title document from M & T Bank which indicated that Rodolfo Passaretti was the current owner as of March 1, 2006 to support Mr. Passaretti's position that he is the title owner of the vehicle, despite the fact that such proof was contrary to his initial Answer and the Supplemental Answer. The plaintiff also submits

that the November 5, 2010 Answer interposed to the Supplemental Summons and Verified Amended Complaint denied that any of the defendants were titleholders of the subject vehicle. As a result of the defendants' contradictory denial of ownership, the plaintiff sought to depose Anne Marie Passaretti to ferret out who really possessed title to the vehicle involved in the accident. As per Court Order, the defendant Anne Marie Passaretti's deposition was scheduled for January 27, 2011. The deposition was canceled by defendants due to the Mrs. Passaretti's work schedule and a predicated snow storm.

Defendant's motion sequence number three to dismiss against Mrs. Passaretti is **granted**. Defendant has submitted the affidavit of Anne-Marie Passaretti indicating that she did not own the vehicle at the time of the accident, the certified Vehicle Title Record indicating that Rudolfo Passaretti was the owner on the date of the accident; a computer print out of the license plate record shows that R. Passaretti was the registered owner; and records from the vehicle lien holder, M & T Bank, showed Rodolfo Passaretti was the only borrower on the vehicle loan. Most importantly, Rudolfo Passaretti has not denied ownership of the car in response to the motions currently before the Court and has provided proof that he has been and is the registered owner of the vehicle. Further, counsel for the insurance company has not denied that Robert Passaretti Jr. a/k/a Rudy Passaretti is the insured individual involved in this accident and is providing coverage. Additionally, the defendant Rodolfo Passaretti, Jr. a/k/a Rudy Passaretti has agreed to stipulate that the driver of the vehicle at the time of the accident was also the registered and titled owner. The plaintiff's application to add Rodolfo Passaretti Sr. to this action is **denied** for the aforesaid reasons.

Plaintiff's application for an Examination Before Trial of Anne-Marie Passaretti and/or Anne Marie Passaretti and/or Annemarie Passaretti and/or Anne M. Passaretti and/or Anne Passaretti and/or Anne-Marie Maddalena and/or Ann Marie Maddalena and/or Annemarie Maddalena and/or Anne M. Maddalena and/or Anne Maddalena Annemarie Passaretti is **denied**.

Plaintiff's application to amend her complaint *nunc pro tunc* to add Rodolfo Passaretti Sr. is **denied**.

ORDERED that the plaintiff's complaint is dismissed against Anne-Marie Passaretti and/or Anne Marie Passaretti and/or Annemarie Passaretti and/or Anne M. Passaretti and/or

Anne Passaretti and/or Anne-Marie Maddalena and/or Ann Marie Maddalena and/or Annemarie Maddalena and/or Anne M. Maddalena and/or Anne Maddalena.

CPLR §3101(a) is to be construed liberally so that there should be disclosure of any material that is even arguably relevant (*see Shanahan v Bambino*, 271 AD2d 519 [2d Dept 2000]. However, “unlimited disclosure is not required, and supervision of disclosure is generally left to the trial court’s broad discretion” (*Palermo Mason Constr. v Aark Holding Corp.*, 300 AD 2d 460 [2d Dept 2002]. The essential test is one based on “usefulness and reason” (*Andon v 302-304 Mott St. Assoc.*, 94 NY 2d 740 [2000])

The defendant Robert Passaretti Jr. a/k/a Rudy Passaretti a/k/a Rodolfo Passaretti’s application for a Protective Order is **granted** in part and **denied** in part.

The case has dragged along too long, primarily because the defendant Robert Passaretti, Jr. “forgets” or “mispeaks” too often on important issues. The name of his business and the ownership of the vehicle he was driving at the time of the accident are all very relevant to the within lawsuit. However, in her Notice to Produce the plaintiff is requesting everything including the kitchen sink to determine if Mr. Passaretti was working at the time of the accident and if so, for what corporate entity. Balancing the need of the plaintiff to clarify the defendant’s employment situation at the time of the accident and the burden that would be imposed upon the defendant to produce all of the documents requested in the Plaintiff’s March 9, 2011 Notice to Produce, the Court makes the following determinations:

ORDERED, that the defendant Rodolfo Passaretti’s application for a Protective Order is **granted** as to Demands Numbered 1,2, 3, 4, 5 and 6. Defendant must answer the remaining Demands by August 7, 2011.

Plaintiff’s application for a further deposition of Rodolfo Passaretti, Jr. regarding his employment and company Pool Passions is **granted** to the extent that it is

ORDERED, that Robert Passaretti, Jr. shall appear for an Examination Before Trial on or before August 31, 2011. Said deposition shall be limited to his business at the time of the accident and shall not exceed three hours. It is further

ORDERED, that the plaintiff’s time to file her Note of Issue is extended to October 5, 2011. It is further

ORDERED, that the parties are directed to appear before the undersigned on September 7, 2011 at 10:00 a.m. for a Certification Conference.

Counsel are advised that in the event that any conflicts arise, they should immediately initiate a conference call with the Court to ensure that Discovery is completed and the case is ready to be certified for trial on September 7, 2011.

This constitutes the Decision and Order of the Court.

DATED: July 18, 2011
Mineola, N.Y. 11501

ENTER:



HON. MICHELE M. WOODARD
J.S.C.

F:\DECISION - DISCOVERY\Manigaulte v Passaretti 3.wpd

ENTERED
JUL 22 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE