

**Monroy v Monroy**

2013 NY Slip Op 32523(U)

January 14, 2013

Supreme Court, New York County

Docket Number: 50860/11

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X  
YOLANDA MONROY,

Plaintiff,

**DECISION & ORDER**

-against-

Index No. 50860/11

FREDDY MONROY, CLAUDINE HALLS-MEREDITH  
and EDGAR REYES

Motion Date: Jan. 14, 2013

Seq. No. 1

Defendants.

-----X  
LEFKOWITZ, J.

The following papers were read on this motion by plaintiff for an order compelling defendant Claudine Halls-Meredith to produce the cell phone number and cell phone carrier information for the cell phone used by her on March 25, 2009, around the time of the accident, at approximately 12:15 P.M.

Order to Show Cause - Affirmation in Support - Exhibits 1-2  
Affirmation in Opposition - Exhibits A-B

Upon the foregoing papers and the proceedings held on January 14, 2013, this motion is determined as follows:

In this action to recover damages for personal injuries sustained in a motor vehicle accident, plaintiff now seeks an order compelling defendant Claudine Halls-Meredith to provide her cell phone number and cell phone carrier information at the time of the accident. It is undisputed that, at the time of the accident, plaintiff was a passenger in a motor vehicle being driven by defendant Freddy Monroy on the Southern State Parkway, their motor vehicle collided with a motor vehicle being driven by Edgar Reyes, and, prior to the accident, the motor vehicle being driven by defendant Halls-Meredith pulled off to the side of the Southern State Parkway.

In the affirmation in support of the motion, plaintiff's counsel contends that defendant Hall-Meredith's vehicle suddenly braked and pulled off to the side of the road, causing the motor vehicle in which plaintiff was a passenger and which was being operated by defendant Monroy, to brake and swerve out of the way causing defendant Reyes' vehicle to hit defendant Monroy's vehicle. Plaintiff's counsel further contends that defendant Halls-Meredith's deposition provides a reason to believe that she was using her cell phone at the time the accident occurred. Plaintiff's counsel further contends that counsel for defendant Halls-Meredith improperly refused to allow her to provide her cell phone number during her deposition. Plaintiff contends that the issue of whether or not defendant Halls-Meredith was using her cell phone is relevant and material to her potential liability in this case, and plaintiff is entitled to the information.

In support of the motion, however, plaintiff's counsel only submitted three pages of the deposition transcript of defendant Halls-Meredith which contains the objection by defendant Halls-Meredith's counsel to a question regarding defendant Halls-Meredith's cell phone number.

Defendant Halls-Meredith opposes the motion on the basis that plaintiff failed to submit any evidence in admissible form in support of the allegation that defendant Halls-Meredith suddenly braked and caused defendant Monroy's vehicle to brake and swerve. In the affirmation in opposition, counsel for defendant Halls-Meredith notes that defendant Monroy has not yet appeared for a deposition. Moreover, counsel notes that upon being asked if defendant Monroy was braking or continuing to drive at the same speed prior immediately prior to the accident, plaintiff testified at her deposition that defendant Monroy was "just driving," and she did not recall if any vehicles were traveling ahead of her prior to impact. Accordingly, counsel contends that plaintiff cannot even establish that defendant Halls-Meredith was traveling in front of defendant Monroy's vehicle and suddenly braked. Counsel for defendant Halls-Meredith annexes the deposition transcripts of plaintiff and defendant Halls-Meredith to the affirmation in opposition.

Defendant Halls-Meredith also opposes the motion on the ground that, during her deposition, she admitted that she used her cell phone around the time of the accident. Counsel for defendant Halls-Meredith, therefore, contends that defendant Halls-Meredith's cell phone records would not provide any relevant information since she already admitted to receiving a call at or around the time of the accident. Counsel further asserts that defendant has a confidentiality interest in her telephone records and such records are not subject to unlimited discovery. Counsel contends that plaintiff has failed to demonstrate how the telephone records may lead to discoverable and/or relevant evidence. Finally, counsel for defendant Halls-Meredith contends that since defendant has already testified that she does not know who her cell phone provider was at the time of the accident and does not think that the phone was even in her name, the motion should be denied.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Accordingly, the standard to be applied in determining the discoverability of information regarding a party's cell phone is whether the information is "material and necessary," (*Morano v Slattery Skanska, Inc.*, 18 Misc3d 464, 474 [Queens Co. 2007]), which "really amounts to whether they are relevant" (*Page v Napier*, 2009 WL 434607). It has been held that "the mere fact that a defendant was in the possession of a cell phone at the time of an accident, without any witness testimony as to it being used at that time," does not entitle plaintiff to defendant's cell phone records, "since such a discovery request would amount to nothing more than a fishing expedition" (*Id.* at 475; see *Carpio v Leahy Mechanical Corp.*, 30 AD3d 554 [2d Dept 2006][defendant's conclusory assertions that plaintiff may have been using her cell phone and may have had time to take evasive action were completely speculative]).

Notably, although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L’Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept, 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]). A motion to compel responses to demands is properly denied where the demands seek information which is irrelevant, overly broad, or burdensome (*Merkos L’Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]).

In the present action, plaintiff has failed to demonstrate that any relevant evidence can be gleaned from defendant Halls-Meredith providing her cell phone number and cell phone provider at the time of the accident. Aside from counsel’s affirmation in support, which is not admissible evidence, plaintiff only submitted three pages of the transcript of defendant Halls-Meredith which contains the discussion between counsel as to whether defendant should provide her cell phone number at the deposition, and the briefing schedule for the present motion.

Moreover, although plaintiff failed to provide the deposition transcripts of defendant Halls-Meredith or plaintiff in support of the motion, the transcripts were submitted to the court by defendant Halls-Meredith in opposition of the motion. A review of the deposition transcript by the court establishes that defendant Halls-Meredith testified that, while she was driving on the Southern State Parkway and prior to the accident, her cell phone rang, she looked in her rear view mirror, turned on her directional signal, and pulled onto the grass next to the parkway. Defendant Halls-Meredith further testified that the phone rang three times before she was able to pull over and answer the phone call, which was from her sister. Defendant Halls-Meredith also testified during her deposition that she could not remember her cell phone provider at the time of the accident, which occurred three years prior to her deposition, or if the cell phone account was in her name or in a friend’s name.

During plaintiff’s deposition, she testified that she saw a vehicle slowing down prior to the accident, but she did not see where the vehicle went. She further testified that defendant Monroy slowed down when the vehicle in front of them slowed down and then he changed lanes. Plaintiff could not remember if the vehicle in front of them slowed down quickly or slowly, could not remember what kind of car was in front of them prior to the accident, and did not know who was driving that car. Plaintiff did not give any testimony as to defendant Halls-Meredith’s use of a cell phone.

In view of defendant Halls-Meredith’s admission that she received a cell phone call prior to the accident and her identification of the caller, it is unclear what additional relevant information may be obtained by plaintiff from the disclosure of defendant Halls-Meredith’s cell phone number and cell phone provider at the time of the accident. Notably, there is no evidence

that refutes defendant Halls-Meredith's deposition testimony that she received a cell phone call prior to the accident and she pulled off the road to answer the call.

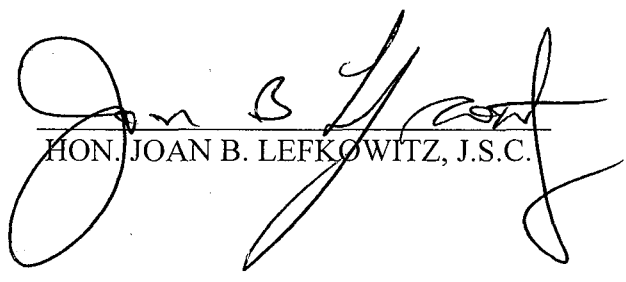
In view of the foregoing, it is

ORDERED that plaintiff's motion is denied; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on January 23, 2013 at 9:30 a.m.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York  
January 14, 2013



HON. JOAN B. LEFKOWITZ, J.S.C.

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