

133 A.D.2d 807, 520 N.Y.S.2d 187
 (Cite as: 133 A.D.2d 807, 520 N.Y.S.2d 187)

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Supreme Court, Appellate Division, Second Department, New York.

William GIBSON, et al., Plaintiffs-Respondents,
 v.

TRANSACT INTERNATIONAL, INC., Defendant
 Third-Party Plaintiff;

Flying Tiger Lines, Inc., Third-Party Defendant-Appellant.

Oct. 26, 1987.

Plaintiffs move to vacate third-party defendant's notice of deposition in personal injury action. The Supreme Court, Queens County, Posner, J., granted motion on condition that plaintiffs' attorney stipulate in writing that third-party defendant could use plaintiffs' depositions previously taken by defendant and granted third-party defendant leave to submit written interrogatories with respect to any matters not adequately covered in prior depositions, and third-party defendant appealed. The Supreme Court, Appellate Division, held that third-party defendant was entitled to depose plaintiffs with respect to facts of accident and parties' alleged negligence not adequately explored in prior depositions.

Affirmed as modified.

West Headnotes

Pretrial Procedure 307A  **175**

[307A](#) Pretrial Procedure

[307AII](#) Depositions and Discovery

[307AII\(C\)](#) Discovery Depositions

[307AII\(C\)4](#) Scope of Examination

[307Ak175](#) k. Admitted Matters and Matters Already Known or Available. [Most Cited Cases](#)

Pretrial Procedure 307A  **177**

[307A](#) Pretrial Procedure

[307AII](#) Depositions and Discovery

[307AII\(C\)](#) Discovery Depositions

[307AII\(C\)4](#) Scope of Examination

[307Ak177](#) k. Circumstances of Accident or Injury and Cause Thereof. [Most Cited Cases](#)

Third-party defendant was not entitled to depose plaintiffs as to matters already fully disclosed in depositions of plaintiffs by defendant prior to third-party defendant's joinder as party, but was entitled to depose plaintiffs with respect to those facts of accident and parties' alleged negligence not adequately explored in prior depositions in personal injury action.

****187** Butler, Fitzgerald & Potter, New York City (David K. Fiveson, of counsel), for third-party defendant-appellant.

****188** Mahler & Harris, P.C., Kew Gardens (Andrew M. Engel, of counsel), for plaintiffs-respondents.

Before ***808** MANGANO, J.P., and BROWN, LAWRENCE, WEINSTEIN and KUNZEMAN, JJ.

MEMORANDUM BY THE COURT.

***807** In an action to recover damages for personal injuries, the third-party defendant appeals from an order of the Supreme Court, Queens County (Posner, J.), dated February 3, 1987, which granted the plaintiff's motion to vacate the third-party defendant's notice of deposition on condition that (1) the plaintiffs' attorney stipulate in writing that the third-party defendant may use the plaintiffs' depositions, previously taken by the defendant, at the trial, and (2) third-party defendant have leave, within 60 days, to submit written interrogatories to the plaintiffs with respect to any matters not adequately covered in their prior depositions by the defendant.

ORDERED that the order is modified by deleting the provision thereof which granted the third-party defendant leave to submit written interrogatories, and substituting therefor a provision granting the third-party defendant leave to take further depositions of the plaintiffs with respect to any aspect of the facts of the accident and the alleged negligence of the parties not adequately covered on the plaintiffs' prior depositions by the defendant; as so modified, the order

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is affirmed, with costs to the third-party defendant; the depositions of the plaintiffs shall take place upon written notice of at least 10 days, or at such time and place as the parties may agree.

The Supreme Court, Queens County, could properly find that the plaintiffs would be unreasonably inconvenienced by granting further disclosure of matters already fully disclosed in the depositions of the plaintiffs by the defendant held prior to the third-party defendant's joinder as a party to this suit. However, the court erred in relegating it to the use of written interrogatories, rather than oral examination, with respect to those facts of the accident and the parties' alleged negligence not adequately explored in the prior depositions.

N.Y.A.D. 2 Dept., 1987.
Gibson v. Transact Intern., Inc.
133 A.D.2d 807, 520 N.Y.S.2d 187

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