

Desiena v Aerco Intl. Inc.
2020 NY Slip Op 33305(U)
October 7, 2020
Supreme Court, New York County
Docket Number: 190459/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 13

Justice

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RAYMOND DESIENA,

Plaintiff,

- v -

AERCO INTERNATIONAL INC.,BMCE, INC.,IN ITSELF AND AS SUCCESSOR TO UNITED CENTRIFUGAL PUMP CO., CARLISLE INDUSTRIAL BRAKE & FRICTION, INC.,CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC.,SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CERTAIN-TEED CORPORATION, CRANE CO., DURR MEGTEC, LLC,EATON CORPORATION AS SUCCESSOR-IN-INTEREST TO EATON ELECTRICAL INC. AND CUTLER-HAMMER INC.,ETHYL CORPORATION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GOSS INTERNATIONAL CORPORATION, HARRIS CORPORATION, HEIDELBERG USA, INC.,INDUSTRIAL HOLDINGS CORPORATION F/K/A THE CARBORUNDUM COMPANY, INGERSOLL-RAND COMPANY, INTERNATIONAL PAPER COMPANY, JOHN CRANE INC.,KELSEY-HAYES COMPANY, MANROLAND GOSS WEB SYSTEMS AMERICAS LLC,METROPOLITAN LIFE INSURANCE COMPANY, MONTALVO CORPORATION, NEXEN GROUP, INC.,INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HORTON MANUFACTURING COMPANY, INC.,ROCKWELL AUTOMATION INC.,INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLEN BRADLEY COMPANY, SCHNEIDER ELECTRIC (USA), INC.,F/K/A SQUARE D COMPANY, UNION CARBIDE CORPORATION, WARNER ELECTRIC LLC,JOHN DOE 1 THROUGH JOHN DOE 75 (FICTITIOUS)

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, and after oral arguments held by the Court on September

24, 2020, it is hereby ordered that defendant Heidelberg USA, Inc.'s order to show cause appealing the Special Master's ruling of August 31, 2020, which ordered defendant Heidelberg USA, Inc. to produce certain paper discovery, is denied.

The Court notes that in the NYCAL litigation, the Special Master supervises discovery such as the adequacy of discovery responses, production of documents, the completion of depositions, and other discovery disputes that may arise.

Here, a discovery dispute arose regarding the production of documents which the Special Master ordered moving defendant to provide. Thereafter, defendant Heidelberg USA, Inc. timely appealed the August 31, 2020 ruling arguing that the ordered paper discovery is unduly burdensome and lacks specificity. Plaintiff opposes.

It is well settled that discovery shall be broad. CPLR §3101(a)(4) states that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof". The Court of Appeals has held that "[t]he words 'material and necessary' ... must 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." *Matter of Kapon v Koch*, 23 NY3d 32, 38 (2014)(internal citations and quotations omitted).

Moving defendant objects specifically to number 2 of the Special Master's recommendation which ordered the production of "[a]ll service and parts manuals, & technical specifications for all presses manufactured by Heidelberg from the 1940's through the 1970's". Order to Show Cause, Exh. I, the Special Master's recommendation dated August 31, 2020, p.5. Through deposition transcripts, plaintiff has established that decedent Ray Desiena worked on a variety of Heidelberg presses during his career which spanned decades as well as at numerous

locations. Thus, plaintiff's request seeking discovery related to such presses is relevant and necessary to the prosecution of the instant action. Plaintiff argues that the only discovery provided relate to Linotype machines which are not at issue herein. As the discovery requested is material and necessary to the prosecution of this action, the burden lies with defendant Heidelberg USA, Inc. to establish that the requested documents are "utterly irrelevant to any proper inquiry". *Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 112. Aside from arguing that the Special Master's recommendation spans several decades and is unclear as to the start date of the 1940's, defendant Heidelberg USA, Inc. has wholly failed to establish that the requested discovery is "untterly irrelevant to any proper inquiry". *Velez v Hunts Point Multi-Serv. Ctr., Inc., supra.*

Furthermore, as per the Case Management Order dated June 20, 2017 (hereinafter referred to as the "CMO"), "[o]bjections to discovery based on burdensomeness shall describe the burden with reasonable particularity. Any objection to the time, place or manner of production, or as to burdensomeness, shall state a reasonable available alternative as a counterproposal." CMO, §IX. J. Here, moving defendants failed to comply with the CMO in that no alternative as a counterproposal has been provided. As such, the instant order to show cause to vacate the Special Master's August 31, 2020 recommendation is denied.

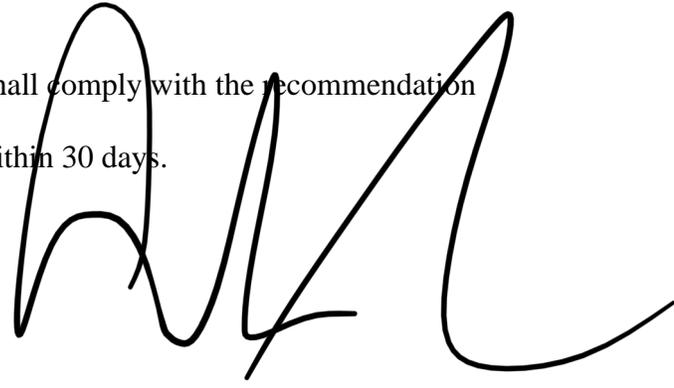
Accordingly, it is

ORDERED that defendant Heidelberg USA, Inc.'s order to show cause to vacate the Special Master's August 31, 2020 recommendation is denied; and it is further

ORDERED that the Special Master's August 31, 2020 recommendation is affirmed; and it is further

ORDERED that defendant Heidelberg USA, Inc. shall comply with the recommendation of the Special Master and provide the ordered discovery within 30 days.

This constitutes the Decision/Order of the Court.



10/7/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE