

Cappabianca v Skanska USA Bldg. Inc.
2007 NY Slip Op 32775(U)
August 31, 2007
Supreme Court, New York County
Docket Number: 0103046/2006
Judge: Edward H. Lehner
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDWARD H. LEHNER
Justice

PART 19

John Cappabianca
SKanska USA Buildings

INDEX NO. 103046/06
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

_____ motion is decided in accordance

with accompanying memorandum decision

FILED
SEP 06 2007
NEW YORK
COUNTY CLERK

Dated: AUG 31 2007

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19**

-----X
JOHN CAPPABIANCA,

Plaintiff,

Index No.
103046/06

-against-

SKANSKA USA BUILDING INC., SKANSKA USA
INC., NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY, BOARD OF TRUSTEES OF THE NEW
YORK CITY SCHOOL CONSTRUCTION
AUTHORITY, THE CITY OF NEW YORK BOARD
OF EDUCATION, THE NEW YORK CITY
DEPARTMENT OF EDUCATION, THE CITY OF
NEW YORK and SAFETY AND QUALITY PLUS
INC.,

Defendants.

FILED
SEP 06 2007
NEW YORK
COUNTY

-----X
LEHNER, EDWARD H., J.:

Defendants Skanska USA Building, Inc. and Skanska USA Inc. (together, Skanska), and New York City School Construction Authority, Board of Trustees of the New York City School Construction Authority, City of New York Board of Education, New York City Department of Education and the City of New York (together, the City) moved for discovery-related relief, pursuant to CPLR 3103, including, among other things, an order: (a) prohibiting the further deposition by plaintiff of the witness for Skanska, Paul Deremer, and limiting the further deposition of said witness by defendant Safety and Quality Plus, Inc. (Safety) to three additional hours of questioning; (b) striking plaintiff's Notice for Discovery and Inspection, dated May 4, 2007; (c) requiring plaintiff to produce the transcripts for certain prior days of deposition, to wit, the two days of testimony given by Deremer, prior to any

further deposition of Deremer; and (d) requiring plaintiff to produce complete copies of exhibits marked during Deremer's first two days of deposition.

Safety cross-moves for an order compelling plaintiff to produce the transcripts of non-party Fabian Garzon's depositions and copies of all marked exhibits, prior to any further deposition of Garzon, and to limit any such further deposition of Garzon to a maximum of two hours. Safety does not oppose the main motion except that it submits that it should not be limited in the amount of time it questions Deremer.

BACKGROUND and DISCUSSION

Plaintiff, a bricklayer, was injured as a result of an alleged fall from an elevated work platform at a construction site. He allegedly sustained various injuries, including a torn ACL in his left knee, which required surgery. Plaintiff seeks damages from defendants based on alleged violations of Labor Law §§ 200, 240 and 241.

On June 6, 2007, the parties attended a compliance conference. A Stipulation and Order was entered into by counsel for all parties, and "so ordered" by this court. In the June 6, 2007 Stipulation and Order: (1) plaintiff was ordered to respond to the Supplemental Notices for Discovery by Skanska and the City, dated March 22, 2007 and April 13, 2007, within 30 days; (2) plaintiff was ordered to respond to Safety's third and fourth supplemental Notice of Discovery and Inspection, within 30 days; (3) Safety was required to serve upon plaintiff copies of its Notice of Discovery and Inspection and its CPLR 3017 (c) Demand, both dated October 3, 2006, and plaintiff was thereafter required to respond within 30 days; (4) plaintiff was required to produce copies of deposition transcripts for

Fabian Garzon and Paul Deremer; (5) defendants were required to serve the IME Report of Dr. Cushier within 30 days; (6) plaintiff was required to submit to an IME by defendants' designated neurologist, Dr. Robert April, within 30 days, and defendants were to serve Dr. April's report concerning said exam within 30 days thereafter; (7) Skanska and the City were required to serve their discovery responses to plaintiff's Notice for Discovery and Inspection, dated May 4, 2007, within 30 days; (8) the parties were directed to file the Note of Issue by August, 30 2007; (9) (contested by Safety), Safety was required to serve copies of all additional records, including any general conditions concerning the Proposal/Agreement/Contract under which Safety had involvement at the subject project as of the date of the accident, within 30 days; (10) (contested by Skanska and the City), Skanska was required to produce Paul Deremer for the continuation of his deposition on or before July 31, 2007; (11) Safety was required to produce non-party witness Fabian Garzon for the continuation of his deposition on or before July 31, 2007; and (12) (contested by plaintiff), plaintiff was required to appear for a further deposition as to those questions counsel previously directed plaintiff not to answer on or before July 31, 2007.

Defendants chose not to comply with certain aspects of the June 6, 2007 Stipulation and Order, and instead brought this motion and cross motion seeking, inter alia, to prohibit the further deposition of the witness for Skanska, Paul Deremer, and to limit the further deposition of the non-party witness for Safety, Fabian Garzon, to two additional hours of questioning.

This motion and cross motion were returnable on July 27, 2007. On that day, counsel conferred with the court and the court-appointed referee, resulting in an oral order whereby: (1) the parties were directed to comply with the terms and obligations of the Stipulation and Order, dated June 6, 2007, to the extent that they had not already done so; (2) Skanska was directed to produce its witness, Paul Deremer, for his continued deposition, as previously provided for in the Stipulation and Order, dated June 6, 2007, and that said continued deposition of Skanska's witness, Deremer, would take place on August 6, 2007 and August 7, 2007; (3) plaintiff was directed to deliver, by hand, transcripts of Skanska's witnesses' prior EBT testimony, to defendants' counsel by August 3, 2007, at 5 pm; (4) Skanska was directed to respond to plaintiff's document request, and deliver, by hand, said response to plaintiff's counsel, by August 3, 2007 at 5pm.;and (5) Skanska was directed to produce the document(s) which Skanska's witness reviewed during his EBT, and that such production by Skanska is to occur at its deponent's continued deposition (on August 6, 2007).

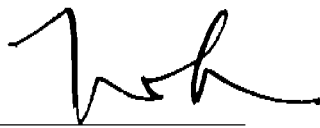
This matter was fully discussed and argued by the parties resulting in the above-mentioned order. Defendants presented no cogent reasons why their compliance with the Stipulation and Order, dated June 6, 2007, should be excused, or that the terms of said stipulation and order were any less binding simply because defendants' objections to certain aspects thereof were noted thereon.

The above oral order, is reduced to writing, as set forth above. The remaining aspects of the motion and the cross motion, to the extent not expressly mentioned above, are denied. Plaintiff's informal request for the imposition of sanctions is denied. However, if defendants

continue to disobey their obligations and the orders of the court, the court will consider sanctions and/or other relief authorized by the CPLR, including, but not limited to, striking defendants' answer(s). This constitutes the decision and the order of the court.

Dated: August 31, 2007

ENTER:



J.S.C.

FILED
SEP 06 2007
NEW YORK
COUNTY CLERK'S OFFICE