

Fanticola v A. C. & S., Inc.

2008 NY Slip Op 31863(U)

June 26, 2008

Supreme Court, New York County

Docket Number: 0125482/2000

Judge: Helen E. Freedman

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

PRESENT: FREEDMAN
Justice

PART 39

FANTICOLA, GUSTINE,
ETAL.

INDEX NO. 125482/00

- v -

A.C.+S., ETAL.

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion for a commission
is granted w/o opposition

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

FILED
JUL 01 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/26/08

HELEN E. FREEDMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

At Part 39 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the ___ day of June, 2008.

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

-----X
IN RE: NEW YORK CITY ASBESTOS LITIGATION : NYCAL
-----X (Freedman, J.)

This Document Relates To: :

GUSTINE FANTICOLA and LINDA FANTICOLA, : Index No. 125482/00
: :
-against- : **ORDER DIRECTING**
: **ISSUANCE OF OPEN**
A. C. & S., INC., et al. : **COMMISSION TO**
: **TAKE DEPOSITION**
: **OUTSIDE STATE OF**
: **NON-PARTY**
: **WITNESS ON ORAL**
: **QUESTIONS**
-----X

FILED

Present: Hon. Helen Freedman, Justice.

Plaintiffs, having moved this Court for an Order pursuant to C.P.L.R. § 3108, directing the issuance of an Open Commission to enable Plaintiffs to take the deposition of a representative of Plymouth Rubber Company as a non-party witness, and to request the Norfolk County Superior Court, Dedham, Massachusetts, to issue a subpoena and subpoena *duces tecum* to Plymouth Rubber Company to appear for and submit to a deposition at a time, date, and place to be determined by the Norfolk County Superior Court, Dedham, Massachusetts; and the motion having regularly come on to be heard before this Court on the ___ day of June, 2008, and the Weitz & Luxenberg, P.C., Plaintiffs, by Adam R. Cooper, Esq.,

JUN 11 2008
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NEW YORK

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OF
WEITZ
&
LUXENBERG, P.C.
180 MAIDEN LANE
NEW YORK, N.Y. 10038

of Weitz & Luxenberg, P.C., having appeared in support thereof and the Defendants, having appeared in opposition thereto; and the Court having heard Oral argument and reserved decision thereon;

Now, upon reading all pleadings filed in this matter and due deliberation having been had thereon and upon reading and filing the Memorandum Decision of this Court dated 26 day of June, 2008; and

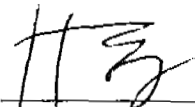
Upon motion of Weitz & Luxenberg, P.C., attorneys for Plaintiffs, it is:

ORDERED, that Plaintiffs' motion for an Open Commission to enable the Plaintiff to take the deposition of a representative of Plymouth Rubber Company as a non-party witness in the State of Massachusetts is GRANTED in all respects; and it is further

ORDERED, that a Commission issue to a Judge of the Norfolk County Superior Court, Dedham, Massachusetts, to take the deposition on oral questions under oath of Plymouth Rubber Company as a non-party witness; and it is further

ORDERED, that Plaintiffs shall bear the costs of conducting the deposition, which costs shall be taxable disbursement in this action.

ENTER,



Hon. Helen Freedman

H. L. FREEDMAN

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

-----X
IN RE: NEW YORK CITY ASBESTOS LITIGATION : NYCAL
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: :
-against- : **COMMISSION TO**
: **TAKE DEPOSITION**
A. C. & S., INC., et al. : **OUTSIDE STATE OF**
: **NON-PARTY**
: **WITNESS ON ORAL**
: **QUESTIONS**
-----X

THE PEOPLE OF THE STATE OF NEW YORK

TO: Judge of the Norfolk County Superior Court, Dedham, Massachusetts:

KNOW YE, that we, with full faith in your prudence and competency, have appointed you by a Judge of your Court, Commission and by these presents do authorize you or any of you to examine a representative of Plymouth Rubber Company as a non-party witness in the above captioned action pending in our Supreme Court, New York County, on the part of the Plaintiffs, under oath, upon oral examination to be conducted under Article 31 of the Civil Practice Law and Rules.

We, therefore, request of you that, in furtherance of justice, you will, by proper and usual process of your Court, cause witness, a representative of Plymouth Rubber Company, to appear before you or some competent person by you for that purpose to be appointed and authorized by you at a precise time, and there to answer, under oath, to the several questions and cross-questions put to him/her by

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the attorneys for the parties hereto and that you will cause the deposition to be committed to writing and return the same to us.

Pursuant to Section 3102(e) of the New York Civil Practice Law and Rules, "[w]hen under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he may be compelled to appear and testify in this same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county shall make any appropriate order in aid of taking such a deposition." In accordance with the foregoing statute we shall be and stand ready, willing and able to do the same for you, as we are asking you to do herein, in a similar case when required.

WITNESS, Honorable Helen E. Freedman Justice of the Supreme Court of the State of New York and the seal thereof, and the City of New York, County of NY this 26 day of June, 2008.

By the Court

HELEN E. FREEDMAN

Clerk

(Seal of the Court)

Adam R. Cooper
WEITZ & LUXENBERG, P.C.
180 Maiden Lane, 17th Floor
New York, New York 10038
(212) 558-5500

TO: ALL REMAINING DEFENDANTS
SEE ATTACHED RIDER

LAW OFFICES
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&
LUXENBERG, P.C.
180 MAIDEN LANE
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FILED

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