

Talenti v Consolidated Edison, Inc.

2014 NY Slip Op 31394(U)

May 28, 2014

Sup Ct, NY County

Docket Number: 102536/08

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
MARJORIE KANE TALENTI a/k/a MARGO KANE,

Plaintiff,

-against-

CONSOLIDATED EDISON, INC., et al.,

Defendants.

-----X
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Third-Party Plaintiff,

-against-

TEAM INDUSTRIAL SERVICES, INC., and THE CITY
OF NEW YORK,

Third-Party Defendants.

-----X
BARBARA JAFFE, J.:

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Index No. 102536/08

Mot. seq. no. 2

DECISION AND ORDER

Third-Party Index No.
590495/08

By order to show cause, plaintiff moves for orders striking the answers of defendants

Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. (Con Ed,

collectively) for its failure to comply with a case management order, setting a discovery end date and note of issue date or, alternatively, directing that plaintiff's trial commence in October 2014 in a reverse bifurcated order, and granting her, pursuant to CPLR 3403(a)(4), a trial preference.

Con Ed opposes; defendants Team and City join.

Plaintiff's motion for a trial preference is granted without opposition. (CPLR 3402[a][4]).

Plaintiff's motion related to discovery issues is resolved as follows:

(1) Depositions:

(a) The parties are directed to adhere to the schedule of depositions set forth in Case Management Order No. 9, except as modified, as follows:

- (i) Depositions may be scheduled on two weeks' notice; parties must confirm at least 48 hours before the scheduled date;
- (ii) If a party chooses not to designate any witnesses during its scheduled week, as set forth in CMO No. 9, or does not designate timely, it will be deemed to have waived depositions for that week. In that case, the party scheduled to conduct depositions for the next week may ask that its depositions be advanced to the vacant week;
- (iii) The parties are directed to serve one another on or before June 15, 2014 with a final list of proposed witnesses. Once the parties receive the final lists, they are directed to notify all parties of the availability of each listed witness from June 15 to October 1, 2014;
- (iv) If a party does not to attend a deposition, it will be deemed to have waived its right to examine the witness, absent good cause for its failure to attend,

which must be demonstrated to this court in writing no later than immediately before the commencement of the deposition;

- (b) Depositions may not be adjourned without court approval unless all parties agree to the adjournment. A request for an adjournment must be made no longer than 48 hours prior to the scheduled deposition, and if the parties do not consent to the adjournment, the party seeking it must contact the court by telephone conference call no longer than 24 hours before the deposition date;
 - (c) Speaking objections may not be made during the depositions. (See CPLR 3115; 22 NYCRR 221.1, 222.3). If an attorney makes a speaking objection during a deposition, the parties are directed to telephone chambers immediately; and
 - (d) Depositions of non-party witnesses may be taken after the note of issue has been filed;
- (2) In light of Con Ed's failure to comply fully with CMO No. 9, should it fail to comply with the requirements set forth herein, its answer and any cross-claims and third-party claims will be stricken upon an affirmation of non-compliance;
 - (3) All discovery, including depositions of party witnesses and document exchanges, must be completed by October 1, 2014. Any adjournment of this date is subject to court approval, even if all parties consent to the adjournment;
 - (4) Plaintiff's request for a bifurcated trial with damages first is granted;
 - (5) A decision on Con Ed's request for a trial date in October is reserved;
 - (6) The parties are directed to resume mediation and to appear at all mediation sessions with full authority to settle;

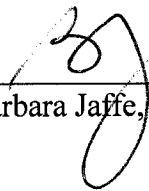
- (7) The parties are directed to confer and agree upon a protocol and schedule for testing and inspection of the steam traps at issue, with the inspection taking place no later than August 1, 2014; and
- (8) The parties are directed to appear for a compliance conference on June 25, 2014 at 2:15 p.m.

Accordingly, it is

ORDERED, that plaintiff's motion for a preference is granted, and within 15 days of filing a note of issue, plaintiff's counsel shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted; and it is further

ORDERED, that plaintiff's motion to strike and for other relief related to discovery issues is granted to the extent indicated above.

ENTER:



Barbara Jaffe, JSC

DATED: May 28, 2014
New York, New York