

**Plotzker v Fountainhead Owners**

2014 NY Slip Op 33219(U)

January 2, 2014

Supreme Court, Bronx County

Docket Number: 301311/12

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX PART 11

Index No.301311/12  
Motion Calendar No.  
Motion Date: June 4, 2013

\_\_\_\_\_  
PLOTZKER, GLORIA

Plaintiffs,

-against-

FOUNTAINHEAD OWNERS

\_\_\_\_\_  
Defendant.

**DECISION/ORDER**

**Present:**

**Hon. Laura G. Douglas**

**J.S.C.**

Motion by plaintiff for an order striking the answers of defendants Fountainhead Owners Corp., and Gramatan Management, Inc. (Building Defendants) and Servi-Tek Elevator Corp. (Servi-Tek) and related relief, is decided as follows:

This is a personal injury action in which plaintiff alleges that she was injured on July 21, 2010 due to a misleveling of an elevator maintained by Servi-Tek in the building owned and managed by the building defendants. On April 4, 2012, plaintiff served a Demand for Discovery and Inspection on the Building Defendants and served additional demands on these defendants on May 22, 2012 (Exhibit B). A Preliminary Conference Order dated May 15, 2012, directed that "all outstanding discovery demands [are] to be responded to on or before June 15, 2012" (Exhibit C). On July 10, 2012, plaintiff sent a letter to the Building Defendants seeking the discovery ordered in the Preliminary conference Order, none of which had been provided, and also demanded any copies of plaintiff's medical records that these defendants had in their possession (Exhibit D).

In the Compliance Conference Order, dated August 3, 2012, the Building Defendants were directed to "provide discovery outlined in Plaintiff's July 10, 2012, letter within forty-five (45) days." Servi-Tek was also directed to respond to the same demands to the extent they were in addition to the directive that Servi-Tek "provide copies of all maintenance, repair, service, callback and inspection records" for the elevator "for two years prior to and including the date of plaintiff's alleged accident within thirty (30) days" (Exhibit E).

Prior to these orders, plaintiff had served demands on Servi-Tek, which sought records for the elevator in question, some of which were not limited in time (accident reports, work orders, records of inspection, care, maintenance, repair, contracts, logs, progress records) and some which were for the period 1999 through present (inspection records and reports of any outside contractor, company or person who inspected the elevator) (Exhibit G.)

Plaintiff acknowledges that her demand for records prior to the accident are now limited to a two-year period prior to the accident as provided in the Compliance Conference Order (Exhibit E), and that Servi-Tek has provided these records. However, plaintiff now seeks repair and service records from Servi-Tek for a three-month period after the accident based on a request for such records by its elevator expert, Patrick A. Carrajat, in a letter dated March 7, 2013 (Exhibit H).

Regarding the Building Defendants, plaintiff acknowledges that they have responded to the combined demands on August 28, 2012 (Exhibit F). However, plaintiff asserts that the Building Defendants have failed to respond to its demand for documents, dated May 22, 2012, except for a copy of the insurance declarations and copies of plaintiff's medical records.

Plaintiff acknowledges that Servi-Tek has responded to its initial demands. Specifically, Servi-Tek served responses and documents pursuant to the court's order dated August 3, 2012, on October 16, 2012 (Servi-Tek's Exhibits C, D and E). Plaintiff does not indicate in her Affidavit of Good Faith that she made any specific attempt to contact Servi-Tek after that date for any additional discovery before she made this motion. Therefore, the motion against defendant Servi-Tek is denied pursuant to 22 NYCRR §202.7 (a).

In any event, the motion against Servi-Tek would have been denied. The order of the court dated August 3, 2012, did not order Servi-Tek to provide any records for three months subsequent to the accident, which is now being sought for the first time. Records of repair subsequent to an accident are normally not discoverable (See Hualde v. Otis Elevator Co., 235 AD2d 269 [1<sup>st</sup> Dept 1997]) and plaintiff does not present any basis why an exception should be made in this case. The letter that plaintiff attaches from the person described as her elevator expert, Patrick A. Carrajat, only indicates that he requests these records, without indicating to what purpose such a request is being made.

Regarding the motion against the Building Defendants, these defendants acknowledge that they had failed to provide a response to plaintiff's Demand for production of Documents, dated May 22, 2012. However, they now attach a response (Exhibit A) and, on that basis, they seek to have the motion against them denied.

However, the response by the Building Defendants is deficient in a number of ways. They indicate that they are attaching records for the elevator for a period from one year before the accident to one year after the accident.

In fact, they attached records for the two-year period after the accident (Reply Exhibit A). Inasmuch as Servi-Tek was directed to provide elevator maintenance and repair records for the subject elevator for two years prior to the accident, The Building Defendants are directed to provide records for the elevator for the same period of time.

The court also notes that The Building Defendants' responses do not correspond to each demand individually, but instead, sometimes provide one response to multiple demands. The court directs The Building Defendants to serve plaintiff with a new response to these demands, corresponding each demand with its own response, so that the paragraph numbers match.

As to Demand #26, responded to in paragraph 25, Building Defendants shall provide plaintiff with copies of official minutes of all meetings for a two-year period prior to the accident, or an affidavit from the person who would maintain such minutes that they do not exist or could not be found and what efforts were made to locate them.

Defendants shall provide plaintiff with a privilege log for Demands 57-59 (responded to in paragraphs 45 and 46), which defendants' claim involves privileged material.

Defendants shall provide any records in their possession regarding Demands 79 and 80, responded to in paragraph #57.

Plaintiff's Demand #61, seeking "copies of all transcripts or testimony that defendant will seek to read into evidence at the time of trial" as well as Demand #62 seeking all documents and exhibits that defendant intends to introduce at trial and Demand #63 seeking the name and address of witnesses who will be called to testify are palpably improper and are denied.

Regarding the building defendants' response #54 to Demands #69, 70, 77, 92, 93 and 99 and response #62 to Demands #85 and 87-93, defendants are directed to respond to these demands, limited to a two-year period prior to the accident.

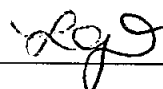
The Building Defendants are directed to provide plaintiff with their Amended Response to Plaintiff's Demand for Production of Documents within thirty (30) days of service upon them of a copy of this order with notice of entry.

All parties are directed to appear in Part 11, Room 711 of this Courthouse on Monday, January 27, 2014, at which time the Court will extend the time permitted for the filing a Note of Issue, as well as order any remaining discovery.

Accordingly plaintiff's motion as against defendant Servi-Tek is denied and his motion as against the Building Defendants is granted only to the extent ordered above.

This constitutes the decision and order of the court

DATED: 1-2-14  
Bronx, New York

  
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HON. LAURA G. DOUGLAS  
J.S.C.