

**All Craft Fabricators, Inc. v ATC Assoc., Inc.**

2017 NY Slip Op 30198(U)

January 30, 2017

Supreme Court, New York County

Docket Number: 156897/13

Judge: Manuel J. Mendez

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

**PRESENT: MANUEL J. MENDEZ**  
*Justice*

**PART 13**

ALL CRAFT FABRICATORS, INC., and  
DONALDSON INTERIORS, INC.,

Plaintiff

INDEX NO. 156897 /13

MOTION DATE 01-25-2017

-Against-

ATC ASSOCIATES, INC., CARDNO ATC,  
SKANSKA USA BUILDING INC., CERTIFIED MOVING  
AND STORAGE CO., LLC, HLW INTERNATIONAL LLP,  
WING INC., SPECIALTY TRADES, TERRASAN  
ENVIRONMENTAL SOLUTIONS, INC., PINNACLE  
ENVIRONMENTAL CORP., THE MANHATTAN COMPANY  
OF NEW YORK LLC, UNITED STATES PLYWOOD  
CORPORATION, CHAMPION INTERNATIONAL CORPORATION,  
OWENS CORNING, RPM INTERNATIONAL INC., DAP  
PRODUCTS, INC., MASONITE CORPORATION,  
INTERNATIONAL PAPER COMPANY and OWENS-  
ILLINOIS, INC.,

Defendant.

MOTION SEQ. NO. 009

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 5 were read on this motion /for summary judgment.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4</u>
Replying Affidavits _____	<u>5</u>

**Cross-Motion:**  Yes  No

Upon a reading of the foregoing cited papers it is Ordered that defendants ATC Associates, Inc, and Cardno ATC's ( hereinafter "ATC") motion pursuant to CPLR 3124 and 3126 compelling plaintiffs to comply with defendants' discovery demands or alternatively precluding plaintiffs from proffering any evidence which would be developed from such discovery at the time of trial is granted.

"All craft Fabricators, Inc., ( hereinafter "All Craft") was hired to do millwork for the refurbishment of the United Nations Headquarters. The project included work on wood panels and doors from the Under-Secretary General (USG) offices at the work site. All Craft was issued a change order by the general Contractor to use salvaged wood panels and doors from the USG offices to perform millwork for the project. Crates were sent to All Craft's offices containing the wood panels and doors that were to be salvaged and refurbished pursuant to the change order." Donaldson Interiors, Inc., ( hereinafter "Donaldson") shared offices with All Craft.

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

**It is alleged that the wood panels and doors contained a core material that consisted of Asbestos. "During May 2012 and June 2012, All Craft performed work on and to the wood panels and doors, which were to be used as interior cabinets at the United Nations Building. During the course of that work being done, asbestos fibers and /or dust containing asbestos spread around the facility where All Craft performed its work. External testing performed by All Craft confirmed that the powdered material was from asbestos contained in the wood panels and doors on which All Craft's work was done."**

**Plaintiffs filed lawsuits to recover against the defendants for the damages they sustained. They also filed a Federal Action against the Hartford Insurance Company. The Plaintiffs settled the Federal action with Hartford insurance Company on June 25, 2014. Prior to settlement the Hartford insurance Company undertook an investigation of plaintiff's claim, including the audit of All Craft's damages claims by a forensic accounting firm.**

**After issue was joined the defendants served the plaintiffs with demands for discovery and interrogatories. The defendants allege that plaintiffs have failed to respond or properly respond to their discovery requests. Defendants allege that in accordance with their demands and multiple court orders the defendants have failed to provide the following:**

- a) Any electronically stored information;**
- b) Any documents regarding the actual work performed on the doors/panels at All Craft's facility ( e.g. shop drawings, instructions regarding millwork protocol, instructions regarding safety procedures, etc.,)**
- c) The Hartford file and an authorization for its release;**
- d) Financial statements and tax return from All Craft and Donaldson for the years 2013 to present;**
- e) Any documentation regarding alleged jobs actually lost by plaintiffs because of the shutdown; and**
- f) Responses by either All Craft or Donaldson to ATC's December 22, 2014 Supplemental Notices of Discovery and Inspection.**

**Plaintiffs oppose the motion stating that they have produced or partially produced the demanded discovery. To that end plaintiffs claim that they have provided copies of e-mails, have provided the settlement agreement with the Hartford Insurance Company and CD disks with copies of Bates Stamped documents. However, a review of plaintiffs' submissions in opposition to this motion shows that the demanded discovery as requested has not been entirely provided.**

**CPLR §3101(a) allows for the disclosure of "all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof. The words material and necessary are to be liberally interpreted 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. CPLR § 3124 grants the court the power to**

**compel a party to provide discovery demanded. CPLR §3126 grants the court the power to sanction a party that fails to comply with a court's discovery order.**

**Defendants demanded the production of Electronically Stored Information in its native format, including metadata. Plaintiffs produced copies of the Electronically Stored Information, for a period after the occurrence of the alleged incident resulting in damage to their facility. To the extent that plaintiffs have not provided the properly demanded information in its native format it is within the court's discretion to order that the demanded information be produced ( see 150 Nassau Associates, LLC, v. RC Dolner, LLC, 96 A.D.3d 676, 948 N.Y.S.2d 40 [1<sup>st</sup>. Dept. 2012]). The cost of retrieving this information is to be borne by the producing party ( see Tener v. Cremer, M.D., 89 A.D.3d 75, 931 N.Y.S.2d 552 [1<sup>st</sup>. Dept. 2011]; U.S. Bank National Association v. Greenpoint Mortgage Funding, 94 A.D.3d 58, 939 N.Y.S.2d 395 [1<sup>st</sup>. Dept. 2012]).**

**The information demanded by defendants is material and necessary in the prosecution and defense of this action. Plaintiffs have failed to provide the discovery previously demanded, and previously ordered to be provided by this court on more than one occasion.**

**Accordingly, it is ORDERED that the motion is granted, and it is further**

**ORDERED that within 45 days from the date of service on plaintiffs' attorney of a copy of this order with notice of entry, plaintiffs provide the defendants with the following:**

**a) All electronically stored information in its native format, including metadata for the period in question;**

**b) All documents regarding the actual work performed on the doors and panels at All Craft's facility ( e.g. shop drawings, instructions regarding millwork protocol, instructions regarding safety procedures, etc.);**

**c) The Hartford Insurance Company file, and an authorization for the release of the Hartford Insurance Company file, including the release of all investigation by the Hartford Insurance Company or anyone retained by the Hartford Insurance Company to conduct an investigation on its behalf of this incident and damages caused to plaintiffs;**

**d) Financial statements and tax return from All Craft and Donaldson for the years 2013 to present;**


**e) All documentation regarding alleged jobs actually lost by each plaintiff All Craft and Donaldson, because of the shutdown ; and**

**f) Responses by both All Craft and Donaldson separately to ATC's December 22, 2014 Supplemental Notices of Discovery and Inspection, and it is further**

**ORDERED** that upon failure of the plaintiffs to provide the discovery within **45** days as contained in this order, plaintiffs will be precluded at the time of trial from offering any evidence of the items demanded and not produced.

ENTER:

Dated: January 30, 2017

  
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Manuel J. Mendez  
J.S.C.

**MANUEL J. MENDEZ**  
J.S.C.

Check one: FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST                       REFERENCE