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| Mananghaya v Bronx-Lebanon Hosp. Ctr. |
| 2017 NY Slip Op 30598(U) |
| March 9, 2017 |
| Supreme Court, Bronx County |
| Docket Number: 20191/2013 |
| Judge: Laura G. Douglas |
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| This opinion is uncorrected and not selected for official publication. |

PART 11

Case Disposed
Settle Order
Schedule Appearance

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

-----X
MANANGHAYA, MALOU

Index No. 0020191/2013

-against-

Hon. LAURA G. DOUGLAS,

-----X
BRONX-LEBANON HOSPITAL CENTER

Justice Supreme Court

The following papers numbered 1 to 3 Read on this motion, COMPEL
Noticed on November 21, 2016 and duly submitted as No. _____ on the Motion Calendar of 3-9-17

| | PAPERS NUMBERED | |
|--|-----------------|--|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | ① | |
| Answering Affidavit and Exhibits | ② | |
| Replying Affidavit and Exhibits | ③ | |
| _____ Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers | | |
| Memoranda of Law | | |

Upon the foregoing papers this motion by third-party defendant/
second third-party defendant
is decided in accordance
with the attached memorandum
Decision/Order.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 3 / 9 / 17

Hon. Zey
LAURA G. DOUGLAS, J.S.C.

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

Index No. 20191/2013

MALOU MANANGHAYA, as Administratrix of the
 ESTATE OF TRISTAN MICHAEL MANANGHAYA,
 MALOU MANANGHAYA, Individually,
 ANICA JILL MANANGHAYA, Infant Child of
 TRISTAN MICHAEL MANANGHAYA,
 ANGELICA NINA MANANGHAYA, Infant Child of
 TRISTAN MICHAEL MANANGHAYA,
 SHANEN MANANGHAYA, Infant Child of
 TRISTAN MICHAEL MANANGHAYA,
 PATRICK MANANGHAYA, Infant Child of
 TRISTAN MICHAEL MANANGHAYA, and
 FRANCIS MIGUEL MANANGHAYA, Infant Child of
 TRISTAN MICHAEL MANANGHAYA,

Plaintiffs,

-against-

BRONX-LEBANON HOSPITAL CENTER and
 NAPOLI TRANSPORTATION, INC. d/b/a
 C & L TOWING SERVICES, INC.,

Defendants.

NAPOLI TRANSPORTATION, INC. d/b/a
 C & L TOWING SERVICES, INC.,

Third-Party Plaintiff,

-against-

AGGREKO, LLC,

Third-Party Defendant.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J.S.C.

Third-Party Index No.
 83819/2013

BRONX-LEBANON HOSPITAL CENTER,

Second Third-Party Plaintiff,

-against-

Second Third-Party Index No.
83953/2013

AGGREKO, LLC,

Second Third-Party Defendant.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to compel production of certain discovery and for an award of costs and expenses:

| <u>Papers</u> | <u>Numbered</u> |
|---|-----------------|
| Notice of Motion by Third-Party Defendant/Second Third-Party Defendant Aggreko, LLC, Good Faith Affirmation of Hillary P. Kahan, Esq. dated October 28, 2016, Affirmation of Hillary P. Kahan, Esq. dated October 28, 2016 in Support of Motion, and Exhibits (“A” through “F”)..... | 1 |
| Affirmation of Matthew J. Koster, Esq. dated November 14, 2016 in Opposition to Motion and Exhibits (“A” through “G”)..... | 2 |
| Reply Affirmation of Hillary P. Kahan, Esq. dated November 17, 2016..... | 3 |

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

Third-party defendant/second third-party defendant Aggreko, LLC (“Aggreko”) seeks an order compelling defendant/third-party plaintiff Napoli Transportation, Inc. d/b/a C & L Towing Services, Inc. (“Napoli”) to respond to Aggreko’s discovery notices dated April 30, 2016 and June 30, 2016 and awarding costs and expense to Aggreko for the instant motion. The motion is granted solely as ordered below and is otherwise denied.

The plaintiffs seek monetary damages for the wrongful death of Tristan Michael Mananghaya (“Mananghaya”), who apparently died when an air cooling unit fell on him on December 4, 2012 while it was being hoisted by Napoli. At the time, Mananghaya was working for Aggreko, which had rented the unit to defendant/second third-party plaintiff Bronx-Lebanon Hospital Center.

Aggreko’s discovery notice dated April 30, 2016 demanded that Napoli provide a copy of the

invoice issued to Napoli from Dover Bake and Clutch for a particular part, a complete copy of the informal settlement agreement between Napoli and OSHA, copies of any invoices for any equipment purchased one year prior to the accident date that Napoli used for the delivery and/or pick-up of the unit, and copies of all maintenance and repair records for one year prior to the accident date for any of the equipment used by Napoli in the delivery and/or pick-up of the unit. Aggreko's discovery notice dated June 30, 2016 demanded that Napoli provide color copies of Exhibits "A" and "I" marked for identification at the deposition of Marlin Mowery taken on August 6, 2014, color copies of all exhibits marked for identification at the deposition of Joseph Killeen taken on August 14, 2015, and color copies of all exhibits marked for identification at the deposition of Talesh Jagdeo taken on April 18, 2016.

In response to the discovery demand dated April 30, 2016, Napoli objected that the items were already in Aggreko's possession and that the demands were "beyond the scope of this litigation, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence". However, Aggreko is entitled to discoverable material from Napoli, regardless of Aggreko's ability to obtain the material through other means. Furthermore, the Court finds that the items requested in Aggreko's discovery notice dated April 30, 2016 are discoverable. These items are material and necessary to Aggreko's defense in this action and should lead to the disclosure of admissible evidence (*see Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403 [Ct App 1968]).

Napoli's settlement agreement with OSHA concerning this accident may certainly lead to admissible evidence. Napoli has not asserted any privilege that would shield this material from disclosure. To what extent any findings or conclusions made in that settlement agreement may be used at trial is an issue to be decided by the trial judge. The remaining demands seek records related to the purchase, maintenance, and/or repair of the very equipment used by Napoli to hoist the air cooling unit which apparently fell and killed the plaintiffs' decedent. The demands are not overbroad in terms of time. Such material would describe the composition and state of the equipment selected by Napoli to perform this job, which could then be assessed to argue whether it was appropriate for the task. This directly bears on ascertaining liability for the accident.

The Court finds that the demands in question are distinct from those made in Aggreko's discovery demand dated March 16, 2015.

Finally, it appears that Napoli responded to Aggreko's discovery notice dated June 30, 2016 during

the course of the instant motion practice.

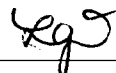
The contentions made by Napoli regarding these discovery demands did have some arguable basis in law. Aggreko has not demonstrated that any of the positions taken by Napoli rise to the level of frivolous conduct required to sustain an award of costs under Part 130 of the Rule of the Chief Administrator.

Accordingly, it is hereby

ORDERED, that Napoli shall provide those items demanded in Aggreko's discovery notice dated April 30, 2016 no later than 30 days following service of a copy of this Order with notice of entry

This constitutes the Decision and Order of this Court.

DATED: 3-9-17
Bronx, New York


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