

Trumbull v Adience, Inc.
2018 NY Slip Op 31669(U)
March 20, 2018
Supreme Court, New York County
Docket Number: 190084/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46RICHARD S. TRUMBULL and
MARGARET TRUMBULL,

Index No. 190084/2016

Plaintiffs

- against -

DECISION AND ORDERADIENCE, INC., f/k/a BMI, INC.,
et al.,

Defendants

LUCY BILLINGS, J.S.C.:

Plaintiff Richard Trumbull seeks damages for injuries he suffered after he was exposed to asbestos from equipment and materials used in his employer's and its customers' facilities that he visited in his capacity as marketing director and administrative manager for Owens-Illinois, Inc., from 1972 to 2000. Plaintiffs previously settled their claims against Owens-Illinois, Inc., and released it from liability to plaintiffs.

On December 27, 2017, defendant Cleaver-Brooks, Inc., requested from the Special Master that plaintiffs disclose their release of Owens-Illinois and all trial exhibit lists plaintiffs served on other defendants and that Cleaver-Brooks be permitted to seek unspecified disclosure from other defendants. On February 10, 2018, the Special Master denied Cleaver-Brooks's requests. Cleaver-Brooks now seeks an order vacating the Special Master's recommendation and granting Cleaver-Brooks's requests for disclosure.

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I. PLAINTIFFS' RELEASE OF OWENS-ILLINOIS

A settlement agreement is discoverable if the terms are material and necessary to a non-settling party's claims or defenses. Mahoney v Turner Constr. Co., 61 A.D.3d 101, 104 (1st Dep't 2009); American Re-Ins. Co. v. United States Fid. & Guar. Co., 19 A.D.3d 103, 104 (1st Dep't 2005). See In re Steam Pipe Explosion, 128 A.D.3d 493, 493 (1st Dep't 2015); Matter of Midland Ins. Co., 87 A.D.3d 487, 491 (1st Dep't 2011). Cleaver-Brooks maintains that the extent to which plaintiffs released Owens-Illinois from liability, either as Richard Trumbull's employer or as a manufacturer of products that contained asbestos, is material and necessary to Cleaver-Brooks's preparation for trial on issues relating to apportionment of liability to nonparties. Upon plaintiffs' consent, the court has conducted an in camera review of the release and determined that it does address whether plaintiffs released Owens-Illinois from liability as Richard Trumbull's employer and as a product manufacturer. Since plaintiffs do not dispute that the release is material to apportionment of liability, Cleaver-Brooks is entitled to disclosure of the release insofar as it addresses those material issues.

Consequently, within three days after entry of this order, plaintiffs shall serve the release on Cleaver-Brooks. Upon its consent, plaintiffs may redact the settlement amount from the release. Plaintiffs also may redact the third and fourth paragraphs on page two of the release, as these paragraphs are

unrelated to the extent to which plaintiffs released Owens-Illinois from liability.

II. EXHIBIT LISTS

C.P.L.R. § 2103(e) requires plaintiffs to serve Cleaver-Brooks with all documents plaintiffs have served on other parties in the action. Plaintiffs waived any protection of the exhibit lists as attorney work product when plaintiffs disclosed those exhibit lists to other defendants pursuant to the Special Master's disclosure schedule. People v. Kozlowski, 11 N.Y.3d 223, 246 (2008); Bluebird Partners, L.P. v First Fid. Bank, N.A., New Jersey, 248 A.D.2d 219, 225 (1st Dep't 1998). Therefore, within three days after entry of this order, plaintiffs shall serve on Cleaver-Brooks all exhibit lists served on other defendants.

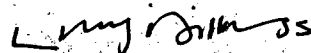
III. DISCLOSURE FROM CO-DEFENDANTS

Cleaver-Brooks fails to specify what disclosure Cleaver-Brooks seeks or to present any actual disclosure requests served on other defendants or any proposed requests. The court therefore upholds the Special Master's recommendation and denies Cleaver-Brooks's request for unspecified disclosure from co-defendants. Insofar as Cleaver-Brooks seeks a ruling on the admissibility of deposition testimony or answers to interrogatories, such a ruling is for the trial judge preliminary to or at the trial.

IV. CONCLUSION

In sum, for the reasons explained above, the court grants the motion by defendant Cleaver-Brooks, Inc., to vacate the Special Master's recommendation to the extent of ordering plaintiffs, within three days after entry of this order, to serve Cleaver-Brooks with a redacted copy of the release and all exhibit lists plaintiffs served on other parties. The court otherwise denies Cleaver-Brooks's motion.

DATED: March 20, 2018



LUCY BILLINGS, J.S.C.

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