

Havison v Port Auth. of N.Y. & N.J.
2019 NY Slip Op 34030(U)
December 20, 2019
Supreme Court, New York County
Docket Number: 158983/2015
Judge: Robert R. Reed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

CHRISTOPHER HAVISON, MICHELLE HAVISON,
Plaintiff,

- v -

PORT AUTHORITY OF NEW YORK & NEW JERSEY,
PORT AUTHORITY TRANS HUDSON CORPORATION,
SIEMENS INDUSTRY, INC., ALDRIDGE ELECTRIC,
INC., CH2M HILL NEW YORK, INC., TUV RHEINLAND
MOBILITY, INC., D/A BUILDERS, LLC

Defendant.

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INDEX NO. 158983/2015
MOTION DATE N/A
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144

were read on this motion for DISCOVERY.

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

Plaintiffs move, pursuant to CPLR 3126, for an order to compel discovery, or to strike the answer, or to deem liability established, as a result of defendants Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, Siemens Industry, Inc., Aldridge Electric, Inc., CH2M Hill New York, Inc., and D/A Builders, LLC's failure to provide discovery. In opposition, said defendants assert that they have already provided all documents demanded by plaintiffs.

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. The phrase "material and necessary" is "to be interpreted liberally 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 and prolixity. The test is

one of usefulness and reason” (*Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403). If a party continuously fails to respond to discovery demands and/or disclose required information, CPLR 3126 provides that the court may issue an order striking out pleadings or parts thereof. To invoke the drastic remedy of striking an answer under CPLR 3126, this court must determine whether any failure to comply with a discovery order was willful, deliberate and contumacious. However, materials that are protected by privilege may be exempt from the regular course of discovery.

“The CPLR establishes three categories of protected materials, also supported by policy considerations: privileged matter, absolutely immune from discovery (CPLR 3101[b]); attorney’s work product, also absolutely immune (CPLR 3101[c]); and trial preparation materials, which are subject to disclosure only on a showing of substantial need and undue hardship in obtaining the substantial equivalent of the materials by other means (CPLR 3101[d][2])” (*Spectrum Sys. Intl Corp v. Chemical Bank* 78 NY2d 371).

This court’s review of the record and all submitted papers leads it to conclude that defendants Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, Siemens Industry, Inc., Aldridge Electric, Inc., and D/A Builders, LLC have failed to fully respond to plaintiffs’ discovery demands. In plaintiffs’ August 5, 2019 supplemental demand, said defendants raised an improper objection -- that is, an objection asserting that plaintiffs inadmissibly demand post-accident investigative material. The demands to which plaintiffs seek responsive documents, however, are sufficiently specific, material to the issues at hand and likely to lead to relevant material. No privilege, moreover, bars the disclosure of such documents.

Defendant CH2M Hill New York, Inc., on the other hand, has provided responses to plaintiffs’ demands that were directed to it.

Plaintiffs have failed to show that defendants willfully, deliberately and contumaciously failed to respond to plaintiffs' discovery demands or to comply with previous court orders.

Accordingly, it is


ORDERED that the portion of plaintiffs' motion seeking to compel responses to its supplemental demand dated August 5, 2019, is granted, and, within 20 days of the date of this order, defendants Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, Siemens Industry, Inc., Aldridge Electric, Inc., and D/A Builders, LLC are hereby directed to provide responsive documents to demand numbers 3, 4, 6, and 7 of plaintiff's supplemental demand dated August 5, 2019; and it is further

ORDERED that the portion of plaintiffs' motion seeking to strike the pleadings of defendants Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, Siemens Industry, Inc., Aldridge Electric, Inc., CH2M Hill New York, Inc., and D/A Builders, LLC or to preclude said defendants from offering evidence at trial relative to liability in this action is denied: and it is further

ORDERED that counsel are directed to appear for a status conference on January 23, 2020 at 9:30am at Part 43, at Room 412, at 60 Centre Street, New York, New York.

This constitutes the Decision and Order of the court.

12/20/2019
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE