

Robles v 635 Owner LLC
2020 NY Slip Op 34270(U)
December 22, 2020
Supreme Court, New York County
Docket Number: 162049/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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ANGEL ROBLES,

Index No. 162049/2015

Plaintiff

- against -

DECISION AND ORDER

635 OWNER LLC and W5 GROUP LLC,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Defendant 635 Owner LLC, the owner of the construction site at 635 6th Avenue, New York County, where plaintiff claims he was injured, has moved to reargue 635 Owner's prior motion to vacate the note of issue and the motion for a protective order by co-defendant W5 Group LLC, the general contractor on the site, which the court determined in an order dated September 24, 2019.

C.P.L.R. § 2221(d). The court's determination, however, was based on the parties' stipulation dated March 27, 2019. That stipulation vacated the prior note of issue, set a new date for a new note of issue, and required W5 Group to respond to 635 Owner's follow-up correspondence itemizing the disclosure 635 Owner still sought, depending on the issues that remained after

the court determined the parties' pending motions for summary judgment. Therefore the court did not overlook or misapprehend anything, but merely ordered what the parties had stipulated.

To the extent that 635 Owner seeks to enforce that stipulation, the court will determine what disclosure that 635 itemized is still relevant to the remaining claims by or against 635 Owner and remains outstanding from W5 Group. 635 Owner also moves to vacate the new note of issue that plaintiff filed pursuant to the parties' stipulation. 22 N.Y.C.R.R. § 202.21(e).

II. THE RELEVANT OUTSTANDING DISCLOSURE

The only issues involving 635 Owner left unresolved by the determination of the motions for summary judgment are whether W5 Group breached a contract to procure insurance for 635 Owner and the extent to which 635 Owner's negligence, if any, contributed to plaintiff's injury so as to reduce the contractual indemnification owed by W5 Group to 635 Owner. 635 Owner's correspondence following the March 2019 stipulation, an email dated May 3, 2019, refers to its prior correspondence dated March 13, 2019.

Regarding the insurance issue, the March 2019 correspondence requests W5 Group's excess liability policy issued by Evanston Insurance Company. W5 Group responds that it has produced five

excess insurance policies and that they are all the applicable policies. In reply, 635 Owner requests nothing further.

The March 2019 correspondence acknowledges that the only disclosure relevant to the extent of contractual indemnification is a deposition of W5 Group concerning (1) the contract between co-defendants for the work being performed at 635 6th Avenue and (2) W5 Group's efforts to locate documents responsive to 635 Owner's requests and W5 Group's destruction of any responsive documents. As an alternative to (2), 635 Owner would accept W5 Group's production of the following documents: (i) job site photographs, invoices, and work schedules stored on project manager James Costello's computer; (ii) "Tool Box Talk" topic pages signed by plaintiff's crew members; (iii) W5 Group's agreements with other entities for services at the site; (iv) payroll records for the workers whom plaintiff supervised; and (v) records of weekly meetings between co-defendants.

635 Owner's request for a deposition of W5 Group concerning the parties' rights and obligations under their contract seeks legal conclusions dictated by the contract's terms, which are the court's province, and not based on W5 Group's interpretation of the contract, which no party has shown to be ambiguous. As there is no ambiguity in the contract's terms, W5 Group's

interpretation of the parties' rights or obligations under those terms is meaningless. The plain terms, which are not reasonably susceptible of more than one interpretation, dictate those rights and obligations. Universal Am. Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA, 25 N.Y.3d 675, 680 (2015); Beardslee v. Inflection Energy, LLC, 25 N.Y.3d 150, 157 (2015); Gilbane Bldg. Co./TDX Constr. Corp. v. St. Paul Fire & Mar. Ins. Co., 143 A.D.3d 146, 156 (1st Dep't 2016); Bank of N.Y. Mellon v. WMC Mtge., LLC, 136 A.D.3d 1, 6 (1st Dep't 2015).

Regarding the documents 635 Owner seeks, they are relevant only if they bear on whether 635 Owner directed W5 Group's operations, did so negligently, and in so doing contributed to plaintiff's injury. See Pellot v. Tivat Realty LLC, 173 A.D.3d 498, 498-99 (1st Dep't 2019); Curran v. New York City Tr. Auth., 161 A.D.3d 649, 649 (1st Dep't 2018); Walters v. Sallah, 109 A.D.3d 401, 402 (1st Dep't 2013); Matter of Souza, 80 A.D.3d 446, 446 (1st Dep't 2011). The court already determined, however, that 635 Owner did not supervise or control plaintiff's work when he was injured and maintained no control over the use of the ladder from which he fell. 635 Owner does not explain how the "Tool Box Talk" topic pages signed by plaintiff's crew members or W5 Group's agreements with other entities for services at the

site bear on whether or how 635 Owner directed W5 Group's operations and may have contributed to plaintiff's injury. Liberty Petroleum Realty, LLC v. Gulf Oil, L.P., 164 A.D.3d 401, 405 (1st Dep't 2018); Curran v. New York City Tr. Auth., 161 A.D.3d at 649; DeLeonardis v. Hara, 136 A.D.3d 558, 558 (1st Dep't 2016). If the request for pages signed by plaintiff's crew members is to identify witnesses, the payroll records for the workers whom plaintiff supervised will serve that purpose.

III. CONCLUSION

Consequently, the court grants 635 Owner's motion to the following extent. Within 20 days after service of this order with notice of entry, W5 Group shall produce to 635 Owner and to plaintiff: job site photographs, invoices, and work schedules stored on Costello's computer; payroll records for the workers whom plaintiff supervised; and records of weekly meetings between co-defendants from March 1, 2013, through May 30, 2013, the period surrounding plaintiff's injury. C.P.L.R. § 3124.

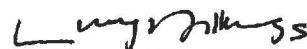
If W5 Group already has produced any of these documents, it need not reproduce them. If it fails to produce any documents in any one of the five categories listed (photographs, invoices, work schedules, payroll records, or records of meetings) it shall provide an affidavit on personal knowledge detailing its efforts

to locate the documents, who participated in those efforts, and the circumstances surrounding any destruction of those documents.

Trade Expo Inc. v. Sterling Bancorp, 171 A.D.3d 634, 635 (1st Dep't 2019); Dedushaj v. 3175-77 Villa Ave. Hous. Dev. Fund Corp., 135 A.D.3d 421, 421 (1st Dep't 2016); Vasquez v. Lambert Houses Redevelopment Co., 110 A.D.3d 450, 451-52 (1st Dep't 2013); Henderson-Jones v. City of New York, 87 A.D.3d 498, 505 (1st Dep't 2011). See Robinson v. Highbridge House Ogden, LLC, 124 A.D.3d 472, 473 (1st Dep't 2015).

The court otherwise denies 635 Owner's motion. The limited disclosure ordered above does not warrant vacatur of the note of issue. 22 N.Y.C.R.R. § 202.21(e); Vazquez v. 3M Co., 177 A.D.3d 428, 429 (1st Dep't 2019); Hickey v. City of New York, 159 A.D.3d 511, 511 (1st Dep't 2018). See Valencia v. City of New York, 188 A.D.3d 549, 549 (1st Dep't 2020).

DATED: December 22, 2020



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