

**Schlachet v One Union Sq. E. Condominium**

2021 NY Slip Op 30125(U)

January 14, 2021

Supreme Court, New York County

Docket Number: 161688/2019

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12**

*Justice*

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INDEX NO. 161688/2019

DAVID SCHLACHET AS ADMINISTRATOR OF  
THE ESTATE OF LARA NADIA ANIKE  
PRYCHODKO DECEASED,

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION + ORDER ON  
MOTION**

ONE UNION SQUARE EAST CONDOMINIUM,  
MAXWELL-KATES, INC.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 40-56  
were read on this motion to strike pleadings.

In this action, plaintiff, as Administrator of the Estate of Lara Nadia Anike Prychodko, deceased, sues defendants for their negligence in the construction, operation, maintenance, and control of the premises at issue, Zeckendorf Tower, One Union Square, Manhattan, and its 27th floor garbage chute and appurtenant appliances and fixtures, which allegedly resulted in the decedent suffering a fatal fall down the garbage chute on July 10, 2018. Plaintiff’s apparent theory of decedent’s demise is that the construction and/or maintenance of the garbage chute and refuse room on the decedent’s floor caused decedent to fall into and down the chute. (NYSCEF 55).

On March 2, 2020, the parties entered into a preliminary discovery conference order. (NYSCEF 32). Now, by notice of motion, plaintiff moves for an order striking defendants’ answer or compelling them to provide sufficient discovery responses. Defendants oppose.

During a telephone conference held on July 2, 2020, during which the court attempted to resolve the motion, plaintiff's counsel was directed to supplement his motion papers with the specific discovery that allegedly has not been provided by defendants. On September 23, 2020, plaintiff filed a supplemental reply. (NYSCEF 55).

According to plaintiff, defendants have refused and failed to provide any responsive documents to plaintiff's discovery demands, all of which are relevant and material to plaintiff's claims, especially certain items outlined in the supplemental reply. (*Id.*).

Defendants contend that they have responded to plaintiff's discovery demands, and that any delay in providing discovery resulted from the COVID19 pandemic. (NYSCEF 48).

A review of defendants' discovery responses reflects that they provided the surveillance footage sought by plaintiff (NYSCEF 50, 51), which plaintiff's counsel does not deny. Defendants also provided the names of possible witnesses and they denied possessing documents related to similar incidents at the building. (NYSCEF 49). Defendants otherwise denied being in possession of certain documents and in the alternative, interposed appropriate objections to the requests.

As to the remaining items sought by plaintiff, the following items appear to be relevant and material to plaintiff's claims, and to the extent that defendants possess them and have not yet produced them to plaintiff, defendants are directed to produce them within 45 days of the date of this order:

- (1) accident reports, documents, emails, correspondence of any nature between and among defendants and as well internally within their perspective organizations arising out of or regarding decedent's death;
- (2) documents, correspondence and transmittals of any nature to or from NYPD, the NYC Coroner's Office or NYCDOB, or any municipal agency or other person/entity undertaking private investigation by defendants or third-parties on the subject matter of this occurrence;

- (3) camera plan/renderings of the common/public areas of the 27th floor identifying camera placement, the decedent's apartment entrance, the elevator at which defendants surveilled the victim exiting before the occurrence, and the subject refuse room; and
- (4) any and all records from agencies of the City of New York regarding this occurrence secured by FOIL request.

Plaintiff articulates no basis for seeking discovery related to other garbage chutes or refuse rooms in the building or to the building's compactor. Nor does it establish that there should be no date limitation on production of certain documents. Thus, the following items are limited solely to the chute and room at issue in the occurrence and to the two years before and including the date of the occurrence, and to the extent that defendants possess the relevant items and have not yet produced them to plaintiff, defendants are directed to produce them within 45 days of the date of this order:

- (1) photographs of the subject garbage chute and refuse room;
- (2) drawings, manuals, manufacturer materials, renderings and diagrams, of the subject garbage chute;
- (3) installation, maintenance, modification, repair records of the subject chute;
- (4) documents (contracts and related writings and communications) to/from any vendor regarding maintenance, repair, alteration/refurbishment or reconstruction of the subject chute and refuse room;
- (5) documents and communications of any nature regarding proceedings or other transaction by and between the building's Coop Board, by and between the Board and building vendors (or management) regarding maintenance, reconstruction, refurbishment of the subject chute and refuse room;
- (6) any and all defendant Board documents, proceedings, communications of any nature (including counsel, professional staff and management documents, made in the usual course of managing the building) regarding the subject refuse room; and
- (7) records of prior complaints regarding use and access of the subject refuse room.

Accordingly, it is hereby

ORDERED, that plaintiff's motion to strike and/or compel discovery is granted to the extent indicated above, and is otherwise denied; and it is further

ORDERED, that the parties are directed to either enter into a stipulation encompassing their next compliance conference on or before March 24, 2021, or appear for the conference in room 341, 60 Centre Street, New York, New York, on March 24, 2021 at 2:15 pm or virtually if necessary. The NOI is due by March 31, 2021.

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BARBARA JAFFE, J.S.C.

1/14/2021  
DATE

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE