

Cafisi v L&L Holding Co., LLC
2022 NY Slip Op 30359(U)
February 3, 2022
Supreme Court, New York County
Docket Number: Index No. 157075/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

SALVATORE CAFISI,

Plaintiff,

- v -

L&L HOLDING COMPANY, LLC, COMREF 380, LLC, J.T.
MAGEN & COMPANY INC., SHISEIDO AMERICA
INC., MANHATTAN MECHANICAL CONTRACTORS, INC., D
& G SHEETMETAL, INC., PAR FIRE PROTECTION, LLC,

Defendants.

-----X

J.T. MAGEN & COMPANY INC.

Plaintiff,

-against-

NATIONAL ACOUSTICS, LLC

Defendant.

-----X

MANHATTAN MECHANICAL CONTRACTORS, INC.

Plaintiff,

-against-

PAR FIRE PROTECTION, LLC, D & G SHEETMETAL, INC.

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 177, 182, 183, 184, 187, 188

were read on this motion to/for CONTEMPT.

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595221/2019

Second Third-Party
Index No. 595436/2021

The motion by plaintiff to hold non-party Keith Lancaster in contempt is decided as described below.

Background

In this Labor Law case, plaintiff seeks to hold non-party Lancaster in contempt for his failure to comply with a subpoena ad testificandum. Plaintiff explains that this case is about his fall from a scaffold and Mr. Lancaster was his foreman at the job site and allegedly wrote the incident report. He explains that Mr. Lancaster did not appear for his deposition and wants to hold him in contempt or, in the alternative, to either preclude any affidavits from this witness or an order compelling him to appear for a deposition under threat of contempt.

In opposition, third party defendant National Acoustics, LLC explains that Mr. Lancaster used to work for it and that it is working to contact Mr. Lancaster. National Acoustics asks the Court to allow a non-party witness deposition of Mr. Lancaster up to 60 days before trial.

Also opposing (at least partially) is defendant Manhattan Mechanical Contractors, Inc. and this party only opposes the portion of the motion that seeks preclusion. It claims it should be able to rely on this witness should he eventually appear.

The Court did not consider the reply filed by plaintiff as the order to show cause did not provide for a reply.

Discussion

“It is well established that a trial court has broad discretion over the discovery process, and its determinations will not be set aside absent a clear showing of abuse of discretion” (*Rodney v City of New York*, 192 AD3d 606, 606, 144 NYS3d 705 [1st Dept 2021] [citations omitted]).

Here, the Court denies the branch of the motion that seeks to hold Mr. Lancaster in contempt. Service upon him of the subpoena and this order to show cause were effectuated via “nail and mail” service at his purported address. The Court declines to hold someone in contempt where there is no evidence that he or she actually received the subject documentation.

However, the Court grants the branch of the motion to preclude any party from relying on an affidavit from Mr. Lancaster. This is the most appropriate remedy due to the age of this case. There is no reason to let this action drag on and on while the parties make apparently futile efforts to locate Mr. Lancaster. Notably, no party, including National Acoustics (Mr. Lancaster’s former employer) asserts that the address where service was attempted is wrong or describes in any detail the efforts to locate him. This is not a case where the parties explain that they are close to finding him, that they have made contact, that they hired an investigator to track him down, or even that they hired someone to wait at his house for a couple of hours until someone comes home. Instead, all that is offered is a vague claim from National Acoustics that it is working to find him. By now, he should have been found.

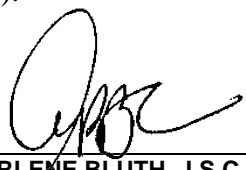
Cases in this part must proceed with the requisite alacrity; a typical Labor Law case should not take half a decade to complete discovery. Sometimes, parties are unable to find non-party witnesses. The foreman should have been one of the first witnesses to be deposed. Because no one can find him, the case must proceed without him.

Accordingly, it is hereby

ORDERED that the motion by plaintiff is granted only to the extent that no party may use any affidavits from Keith Lancaster in this case.

Remote Conference: April 18, 2022 (NYSCEF Doc. No. 180).

2/3/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: