

Pycior v New Line Structures, Inc.

2022 NY Slip Op 30585(U)

February 24, 2022

Supreme Court, New York County

Docket Number: Index No. 151878/2016

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

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INDEX NO. 151878/2016

RAFAL PYCIOR,

MOTION SEQ. NOS. 004, 005

Plaintiff,

- v -

NEW LINE STRUCTURES, INC., THE CHETRIT GROUP, LLC, 135 WEST 52ND STREET OWNER, LLC, and SENTECH ARCHITECTURAL SYSTEMS, LLC.,

DECISION + ORDER ON MOTION

Defendants.

-----X

NEW LINE STRUCTURES, INC., THE CHETRIT GROUP, LLC, and 135 WEST 52ND STREET OWNER, LLC

Third-Party Index No. 595400/2016

Third-Party Plaintiffs,

-against-

CROWNE ARCHITECTURAL SYSTEMS, INC.,

Third-Party Defendant.

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NEW LINE STRUCTURES, INC., THE CHETRIT GROUP, LLC, and 135 WEST 52ND STREET OWNER, LLC,

Second Third-Party Index No. 595116/2018

Second Third-Party Plaintiffs,

-against-

SENTECH ARCHITECTURAL SYSTEMS LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 227, 228, 232, 233, 234, 235, 236, 237, 244, 245, 246, 247, 248

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 005) 220, 221, 222, 223, 224, 225, 229, 230, 231, 238, 239, 240, 241, 242, 243, 249

were read on this motion to/for PRECLUDE

In this Labor Law action, Motion Sequences 004 and 005 are consolidated for disposition. In Motion Sequence No 004, Defendants/third-party plaintiffs/second third-party plaintiffs, New Line Structures, Inc. (“New Line”), The Chetrit Group, LLC (“Chetrit”), and 135 West 52nd Street Owner, LLC (“135 West”) (collectively “the New Line Defendants”) move for an order, pursuant to CPLR 3126, compelling third-party Plaintiff Crowne Architectural Systems, Inc. (“Crowne”) to comply with outstanding discovery demands; precluding Crowne from offering certain evidence at trial; and striking Crowne’s pleadings.¹ Crowne opposes the motion.

In Motion Sequence No 005, defendant/second third-party defendant Sentech Architectural Systems, LLC (“Sentech”) moves for an order, pursuant to CPLR 3124 and 3126, deeming resolved that Crowne does not possess the documents that were Ordered by this Court to be disclosed by Crowne; deeming resolved that Plaintiff’s alleged impairments of enjoyment of life and wage earning capacity are the result of conditions unrelated to the subject incident; and/or precluding Plaintiff and Crowne from offering testimony at trial establishing, refuting, or relating to the subject matter of the documents that were Ordered to be disclosed; and/or dismissing Plaintiff’s complaint and/or striking Crowne’s Answer; or alternatively an Order compelling Plaintiff and Crowne to exchange by a date certain the outstanding discovery.² Plaintiff and Crowne oppose Sentech’s motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and caselaw, the motions are decided as follows.

¹ The portion of motion 004 that remains pending is against third-party defendant Crowne only (Doc 253, Letter to the Court).

² Plaintiff’s counsel provided Sentech the records from Plaintiff’s health insurer after the filing of this motion (Doc 229).

I. Factual and Procedural Background

On or about March 4, 2016, Plaintiff, an employee of Crowne, commenced this action against New Line, Chetrit, 135 West, and Sentech, alleging that on June 4, 2015, while performing work at 135 West 52nd Street, New York, New York 10019 (the “Subject Premises”), a glass panel fell from a crate onto his left foot and caused him to sustain injuries.

According to the New Line Defendants and Sentech, discovery revealed that Crowne’s contract (Doc 248) called for the use of a Master Rigger and various other safeguards for unloading the crate prior to its opening and, accordingly, the following documents were demanded from Crowne:

- i. information concerning the licensed Master Rigger, if any, retained by Crowne, including name and address, as well as any contracts, agreements, proposals, reports, records between Crowne and this person/entity;
- ii. any written rigging “Method of Procedure” (MOP);
- iii. any plan drawings and lift plans related to the delivery and unloading of crates with glass panels;
- iv. any written “Job Hazard Analysis”;
- v. Records/minutes of any pre-plan meetings;
- vi. Records/minutes of any pre-task meetings;
- vii. copies of all “Job Hazard Analysis” documents generated by Crowne or any third-party for work conducted at the project site located at 135 West 52nd Street from January 1, 2014 through June 4, 2015; and
- viii. color copies of photos of the scene of plaintiff’s accident that Mr. Ali took with his cellphone, referring to pp 140- 141 of Mr. Ali’s EBT Transcript

(see Docs 214, 215, 216, and 217). Crowne's counsel stipulated to exchange these records pursuant to four So-Ordered Stipulations from February until June 2021.

According to Crowne's counsel, Crowne's principal died and his death is the subject of a separate, unrelated action; the records of Crowne, which went into bankruptcy in 2017 after its principal's death, were turned over by the bankruptcy trustee to The Peregman Firm, the attorneys representing the estate of Crowne's principal in the separate wrongful death action, and the Peregman Firm has placed the records, which may include the above-referenced documents, into a storage facility in Southern New Jersey. Crowne contends that the Peregman Firm became non-communicative, thwarting his effort to access the records in this action.

II. The Parties' Contentions

In support of their motion, The New Line Defendants argue that Crowne's repeated pattern of non-compliance with discovery warrants the inference that Crowne's behavior was willful, contumacious and made in bad faith, and seek an order, pursuant to CPLR 3124 and 3126, compelling Crowne to provide outstanding discovery and/or precluding it from offering certain evidence at trial.

In support of its motion, Sentech argues, in part, that the documents requested from Crowne are material to its defense of the action.

In opposition to both motions, Crowne argues that it is not in control or possession of the requested records. Crowne further argues that it has the right to use said documents at trial if it comes into control or possession of the same.

In further support of their motion, the New Line Defendants argue that Crowne must be precluded from offering the requested documents at trial since they are relevant and probative of Crowne's liability in this action.

In further support of its motion, Sentech argues that Crowne must be precluded from offering the requested documents at trial since they are in its possession and Crowne's counsel himself stipulated to provide these documents in four So-Ordered Stipulations.

III. Legal Conclusions

A conditional order of preclusion is warranted when noncompliance with prior court orders results in the unavailability of certain documents, especially those that are "relevant and probative" of a "central issue" (*Schneider v Bush*, 170 AD2d 319 [1st Dept. 1991], citing CPLR 3126; see also *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74 [2010]; *Gross v Edmer Sanitary Supply Co., Inc.*, 201 AD2d 390 [1st Dept. 1994]).

Here, Crowne has failed to provide discovery that it stipulated to provide based on four So-Ordered Discovery Stipulations dated February 22, April 23, June 7, and June 14, 2021. Additionally, Crowne has failed to explain why it is not in control or possession of these documents since these are Crowne's own records rather than those belonging to its deceased principal. Crowne's counsel himself stated that he would be provided with access to the storage unit in question (Doc 236 ¶ 6). Further, it is undisputed that these documents are relevant to whether Crowne complied with its contractual duties while conducting its loading operations. Therefore, Crowne is precluded from testifying or offering into evidence at trial the court-ordered documents from the So-Ordered Discovery Stipulations (Docs 214, 215, 216, & 217) unless Crowne produces them by March 25, 2022. The parties' remaining arguments are without merit or moot in light of the above analysis and/or the So-Ordered Stipulation dated February 22, 2022.

Accordingly, it is hereby:

ORDERED that Motion Sequence No 004 by New Line Structures, Inc., the Chetrit Group, LLC, and 135 West 52nd Street Owner, LLC against Crowne Architectural Systems, Inc. (“Crowne”) and Motion Sequence No 005 by Sentech Architectural Systems, LLC against Crowne are granted to the extent that Crowne, having failed to comply with orders of this Court dated February 22, 2021, April 23, 2021, June 7, 2021, and June 14, 2021, and having failed to successfully present any excuse for such conduct, is precluded from offering any evidence in opposition to Plaintiff’s and Third-Party Plaintiffs’ claims of liability unless the following documents are provided to New Line Structures, Inc., the Chetrit Group, LLC, 135 West 52nd Street Owner, LLC, and Sentech Architectural Systems, LLC by Crowne on or before March 25, 2022, and the motions are otherwise denied:

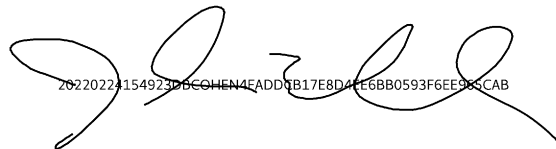
- ix. information concerning the licensed master rigger, if any, retained by CROWNE, including name and address, as well as any contracts, agreements, proposals, reports, records between CROWNE and this person/entity;
- x. any written rigging “Method of Procedure” (MOP);
- xi. any plan drawings and lift plans related to the delivery and unloading of crates with glass panels;
- xii. any written “Job Hazard Analysis”;
- xiii. Records/minutes of any pre-plan meetings;
- xiv. Records/minutes of any pre-task meetings;
- xv. copies of all “Job Hazard Analysis” documents generated by Crowne or any third-party for work conducted at the project site located at 135 West 52nd Street from January 1, 2014 through June 4, 2015; and

xvi. color copies of photos of the scene of plaintiff’s accident that Mr. Ali took with his cellphone, referring to pp 140- 141 of Mr. Ali’s EBT Transcript; and it is further

ORDERED that, if Crowne produces some or all of the above-listed documents on or before March 25, 2022, the New Line Defendants’ and/or Sentech’s counsel is directed to e-file an affirmation of compliance as to what documents were produced on or before April 5, 2020; and it is further

ORDERED that the Note of Issue deadline has been extended to April 5, 2022 (see Doc 255); and it is further

ORDERED that the parties are to appear for a compliance conference on March 22, 2022 at 3:00 PM (see id.).



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DAVID B. COHEN, J.S.C.

2/24/2022
DATE

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