

Ferrari v A.O. Smith Water Prods. Co
2022 NY Slip Op 30589(U)
February 16, 2022
Supreme Court, New York County
Docket Number: Index No. 190003/2021
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA

PART 13

Justice

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MARIO FERRARI,

Plaintiff,

- v -

A.O. SMITH WATER PRODUCTS CO, AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, COURTER & COMPANY INCORPORATED, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, GENERAL ELECTRIC COMPANY, IMO INDUSTRIES, INC, MARIO & DIBONO PLASTERING CO., INC, MORSE DIESEL, INC, NORTHROP GRUMMAN CORP. AS SUCCESSOR TO GEORGE A. FULLER COMPANY, O'CONNOR CONSTRUCTORS, INC., F/K/A THOMAS O'CONNOR & CONNOR & CO., INC, PFIZER, INC. (PFIZER), SKANSKA KOCH, INC, STRUCTURE TONE, TISHMAN LIQUIDATING CORP, TISHMAN REALTY & CONSTRUCTION CO., INC, TURNER CONSTRUCTION COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, VRH CONSTRUCTION CORP, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, CRANE CO., PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Defendant.

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INDEX NO. 190003/2021
MOTION DATE 08/04/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

Upon the foregoing documents, it is hereby ordered that the defendant Skanska Koch, Inc.'s (hereinafter referred to as "Defendant Skanska") appeal of the Special Master's

recommendation of May 23, 2021, which ruled that Defendant Skanska must turn over information by product identification interrogatory, is denied.

The Court notes that in the NYCAL litigation, the Special Master supervises discovery such as the adequacy of discovery responses, production of documents, the completion of depositions, and other discovery disputes that may arise.

Here, a discovery dispute arose as Defendant Skanska refused to respond to product identification interrogatories following the completion of Plaintiff Mario Ferrari's deposition testimony. The Special Master then recommended, on May 23, 2021, that Defendant Skanska respond to product identification interrogatories. Defendant Skanska now appeals.

It is well settled that discovery shall be broad. CPLR §3101(a)(4) states that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof”. The Court of Appeals has held that “[t]he words ‘material and necessary’ ... must 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.” *Matter of Kapon v Koch*, 23 NY3d 32, 38 (2014) (internal citations and quotations omitted).

The moving defendant argues that the request itself is “too broad, bear[s] no relevance, and are immaterial and unnecessary”. Affirmation in Support of Skanska Koch, Inc.’s Appeal of the Special Master’s May 23, 2021 Recommendation, ¶ 28. However, plaintiff’s product identification interrogatories were a means to obtain general information about Defendant Skanska’s whereabouts at the time the plaintiff was exposed to asbestos which indeed bears significance to the instant case. The plaintiff’s testimony reflected that he was in the presence of Defendant Skanska at one of the job sites during the plaintiff’s career but could not specifically recall if the

moving defendant was present during other pertinent jobsites. A reading of subsection D of section IX of the CMO, on its face, allows for the plaintiff to serve defendant with product identification interrogatories for the purpose of general information regarding worksites. Here, Plaintiff was inquiring about information that was general in nature and was not conducting a fishing expedition to disadvantage the moving defendant, which was evidenced by the fact that the requested information was relevant to the causal relationship between the plaintiff's exposure and Defendant Skanska's liability. Naturally, in reference to disclosure, "[i]ts scope is 'generous, broad, and is to be construed liberally'." *In re New York City Asbestos Litig.*, 37 Misc. 3d 1232(A), (Sup. Ct. 2012)(internal citations omitted). "CPLR §3101 has been interpreted 'to give effect to the strong public policy favoring full disclosure to adequately prepare for trial'". *Id.*

Defendant further argues that the information sought by the plaintiff through the interrogatories fails the test of usefulness and reasonableness. This is because the timeline in which the interrogatories sought is too expansive, spanning over a 40 year period of when Defendant Skanska was in the presence of the plaintiff. However, the product identification interrogatories are sufficient so long as the questions are "specific enough to apprise defendant of the categories of items sought, which are narrowly defined." *Ensign Bank, F.S.B. v Gerald Modell, Inc.*, 163 A.D.2d 149, 149, (1st Dep't 1990). In the case at hand, the plaintiff provided the specific job sites for Defendant Skanska within Chart A of Exhibit F of the Order to Show Cause. Here, the product identification interrogatories make clear to the moving defendant what is sought by the plaintiff. Defendant Skanska is provided the locations at which it may or may not have been present at the time the plaintiff was working. Under these circumstances, Plaintiff has put Defendant Skanska on notice through Chart A, of the specific items sought.

Moreover, the contention that the defendant should not be required to respond to the product identification interrogatories because the plaintiff did not answer in the affirmative is without merit. According to CMO, Section IX (D) “[d]efendants shall respond to plaintiff’s product identification interrogatories per the CPLR.” CPLR 3101(a) is a broad interpretation of full disclosure, meaning that the fact that the plaintiff was not completely certain whether he saw Defendant Skanska at the aforementioned sites has no bearing on the validity of the questions asked within the interrogatories which are specifically permitted pursuant to the CMO.

It is important to note that Defendant Skanska is correct in stating that “[l]itigants are not without protection against unnecessarily onerous application of the discovery statutes”. *Kavanagh v Ogden Allied Maint. Corp.*, 92 NY2d 952, 954, (1998). “Under our discovery statutes and case law, competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party”. *Id.* However, in arguing that the instant discovery is too broad, the burden lies with Defendant Skanska to establish that the requested documents are “utterly irrelevant to any proper inquiry”. *Velez v Hunts Point Multi-Serv. Ctr. Inc.*, 29 AD3d 104, 112 (1st Dep’t 2006). Here, Defendant Skanska failed to meet such burden. Moreover, as per the CMO, “[o]bjections to discovery based on burdensomeness shall describe the burden with reasonable particularity. Any objection to the time, place, or manner of production, or as to burdensomeness, shall state a reasonable available alternative as a counterproposal.” CMO, § IX.J. Here, Defendant Skanska failed to comply with the CMO in that moving defendant has not described with particularity the burden, nor have they provided an alternative as a counterproposal. As such, Defendant Skanska’s arguments fail.

Accordingly, it is

ORDERED that Defendant Skanska's Order to Show Cause appealing the Special Master's May 23, 2021 Recommendation is denied; and it is further

ORDERED that the Special Master's May 23, 2021 Recommendation is affirmed; and it is further

ORDERED that Defendant Skanska shall comply with the recommendation of the Special Master and provide the ordered discovery within 30 days.

This constitutes the decision/order of the Court.

2/16/2022

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE