

Norris v Dish Network, L.L.C.

2022 NY Slip Op 34867(U)

July 27, 2022

Supreme Court, Onondaga County

Docket Number: Index No. 002561/2020

Judge: Robert E. Antonacci II

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At a term of the Supreme Court of the State of New York, held in and for the County of Onondaga, on July 27, 2022.

STATE OF NEW YORK SUPREME COURT
COUNTY OF ONONDAGA

EMMA J. NORRIS and BRUCE A. NORRIS,

Plaintiff,

v.

DISH NETWORK, L.L.C.,
DISH NETWORK, CORP.,
DISH NETWORK SERVICES, L.L.C. and
AUSTIN COFFIN,

Defendants.

DECISION AND ORDER
Motion Sequence # 2 and 3
Short Form

Index No. 002561/2020

Appearances: Jeffrey P. Reisner, Esq.
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Attorney for Defendants

ANTONACCI II, J.S.C.

Motion Sequence # 2

The following papers having been considered by the Court on the Defendants Dish Network, L.L.C., Dish Network, Corp., Dish Network Services, L.L.C. [hereinafter “Dish Network”] and Austin Coffin’s [hereinafter “Coffin”] motion for an order precluding the Plaintiffs Emma J. Norris [hereinafter “Emma Norris”] and Bruce A. Norris [hereinafter “Bruce Norris”] from offering the testimony of Plaintiffs’ expert, Gregg Ordon:

NYSCEF Documents 42 through 53, 56 through 61 and 71 through 75

Motion Sequence # 3

The following papers having been considered by the Court on the Defendants Dish Network”] and Coffin’s motion for an order precluding the Plaintiffs Emma Norris and Bruce Norris from offering making statements or offering testimony with respect to industry standards, safety standards, corporate greed or public policy, etc.:

NYSCEF Documents 54, 55, 62 through 68 and 76

This matter involves the placement of a sales bag on the floor in front of a dresser by Coffin during a service call that Emma Norris subsequently tripped over.

Coffin testified as follows:

Q And where would you have placed the bag?

A I would have placed the bag at -- right up against the front of the dresser, so it would have been right up against where the drawers are.

NYSCEF Document 50 [Exhibit G (Deposition of Emma Coffin on November 17, 2021)] at 84.

Q And between the time when you put the sales bag down in that location and you went outside to do the dish replacement, did you have any communication with Mr. Norris?

A I don't remember, but I -- if I recall correctly, I think that I did speak to him when I went outside.

Q And do you remember what you said?

A It would have just been telling him that I'm going outside to check the dish.

Q Would you have let him know that you were leaving the bag there?

A I would not have, but at that point because I do remember going to that TV first, that he 1 would have seen me set the bag down there and leave it there earlier in the visit.

Q Do you remember him watching you?

A He was in the room with me when I had set it down there and when we left that bag to go to the next room.

Id. at 86-87.

Q And are there other areas within the room depicted on Exhibits 4 or 5 where you could have placed your sales bag so as it was out of the way of someone who was going to be using the dresser depicted in Exhibit 3?

* * *

A I could have possibly put it to the left, but I would have still placed it near where I was working.

- Q Could you have put it on the bed as depicted in Exhibit 4?
- A I could have, but I typically would not have done that.
- Q Why?
- A Because I wouldn't have wanted to mess up the bed, so typically I'll just place it on the floor where I'm working.
- Q . . . Did you receive any training from Dish as to where to position the sales bag?
- A We did not.
- Q That was not covered in part of your safety training?
- A No. It was fairly common knowledge to not have it in the middle of a room, to have it up against where we're working, whether it be -- whether it be like a TV stand or dresser. It was very typical to have it right up against the front of it and --
- Q And when you say -- go ahead.
- A -- and not be sitting in the middle of the room or in the way of any walking paths or anything like that.
- Q Why?
- A Because if it were to be placed in the middle of the room it would have been a tripping hazard.
- Q But that was not covered -- strike that. You mentioned common knowledge in either your previous answer or the one before that, do you recall using that phrase?
- A I just used that in that last answer, yes.
- Q Yeah. And what do you mean by that phrase?
- A As in it is just generally known to -- if you leave something out in the open that it would be a tripping hazard, like most people would recognize that.
- Q Okay.
- A And so that's what I meant by common knowledge.

Id. at 98-100.

Emma Norris testified that

A I came out of the laundry room with a stack of folded laundry. I was taking it in to put in the dresser drawer, and stack was, oh, perhaps that high (indicating).

* * *

Q -- a foot and a half, 2 feet high?

A It was my laundry, jeans, tops, underwear, socks.

Q And you were taking it into your room?

A Yes, to put away in the dresser.

Q And then what happened?

A I turned to go in the bedroom, I took one step, and then it was the second or third step, I'm not sure which, my foot hit the bag, and down I went.

NYSCEF Document 49 [Exhibit F (Videotaped Deposition of Emma J. Norris on December 8, 2020)] at 46-47.

Q The -- was the height of the laundry you were holding out in front of you at your eye level, below your eye level, or above your eye level?

A I couldn't see my feet.

Q You anticipated my next question. As you were walking, could you see your feet?

A No.

Q . . . How far in front of you could you see as you were walking from your laundry room to your bedroom?

A I could see everything but my feet. I was looking forward.

* * *

Q Did you see the bag before your foot came into contact with it?

A No.

Q Was there anything that was preventing you from being able to see it?

A My stack of laundry.

Q Anything else that was preventing you from being able to see that – that bag?

A No.

Id. at 49-51.

Emma Norris and Bruce Norris have disclosed that Gregg Ordon will provide expert testimony as follows:

It is expected that the Substance of the facts and opinions on which Mr. Ordon will testify will be that the standard of care in the telecommunications and information technology home services industry is that the scope of work relate to a service call be pre-defined, that a technician be fully apprised of that scope of work, and that the technician be expected to execute the scope of work as precisely as possible. It is further expected that Mr. Odon [*sic*] will testify that it is outside the standard of care in the telecommunications and information technology home services industry to require a field technician to undertake an active sales role, and that it is a breach of that standard of care to allow, much less direct or require, the introduction of sales equipment into a jobsite, by a technician, and a further breach to require the technician to actively attempt to upsell a customer as part of their duties on a service call. Additionally, Mr. Ordon is expected to testify that once such sales equipment is introduced to a jobsite the technician introducing such equipment has a duty to place such equipment in a reasonably safe manner so as not to cause a trip hazard on the jobsite, and that given the materials reviewed in this case that the placement of the sales bag at issue in this case was reasonably foreseeable to constitute such a trip hazard. Finally, it is expected that Mr. Ordon will testify that Defendant Coffin should not have placed and left the bag at issue in the place it was admitted to have been placed and left, and that Defendant Coffin should have been trained not to take such actions and supervised in such a manner so as to confirm Defendant Coffin's knowledge of the hazards created by such placement and abandonment of the bag without proper and reasonable inquiry of and communication with all members of the household constituting the jobsite.

NYSCEF Document 52 [Exhibit I (Response to Remand for Expert Information)] at ¶ 3; *also as* NYSCEF Document 60 [Exhibit D].

The proffered expert opinion alleges that (a) a technician should not be required to undertake “an active sales role”, (b) a sales bag should not be placed “to cause a trip hazard”, (c) a technician should be adequately trained to not place a sales bag to cause a trip hazard and (d) a technician should communicate with all members of the household on the jobsite.

The Court finds that there can be no reasonable basis for the need for an expert opinion with respect to Dish and Coffin that the job expectations conveyed to Coffin violated any standard of care in the telecommunications and information technology home services industry that would prevent Coffin from taking an “active sales role” as part of a service visit. *See* 1A NY PJI3d 1A NY PJI3d 1:90 at 169-170 (“The role of the trial court is to determine when jurors are able to draw conclusions from the evidence based on their day-to-day experience, their common observations and their knowledge, and whether they would benefit from the specialized knowledge of an expert witness [citations omitted]”).

The Court finds that there is no need for an expert's opinion on the question of the placement of the sales bag and whether a technician needs to be trained in where to place a sales bag. *See* 1A NY PJI3d 1:90 at 169 (“The guiding principle is that expert testimony should be received ‘when it would help to clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror’ [citations omitted]”).

Coffin stated that Coffin located the sales bag based upon

[i]t was fairly common knowledge to not have it in the middle of a room, to have it up against where we're working, whether it be – whether it be like a TV stand or dresser. It was very typical to have it right up against the front of it and – and not be sitting in the middle of the room or in the way of any walking paths or anything like that.

NYSCEF Document 50 [Exhibit G (Deposition of Emma Coffin on November 17, 2021)] at 100.

Finally, the Court finds that there can be no reasonable basis for the need for an expert opinion with respect to Dish and Coffin that Coffin violated any standard of care in the telecommunications and information technology home services industry that would require Coffin to have sought out and communicated with any other household members independently of the contact person, Bruce Norris, as part of a service visit. *See* 1A NY PJI3d 1A NY PJI3d 1:90 at 169-170 (“The role of the trial court is to determine when jurors are able to draw conclusions from the evidence based on their day-to-day experience, their common observations and their knowledge, and whether they would benefit from the specialized knowledge of an expert witness [citations omitted]”).

The Court will grant Dish and Coffins' motion to preclude the expert testimony of Gregg Ordon.

Dish and Coffin have additionally moved for an order

- (1) precluding Plaintiffs from injecting improper and irrelevant arguments during voir dire, openings, trial, and summation of this jury trial regarding industry standards, safety standards, corporate greed, or public policy;
- (1-a) precluding Plaintiffs from alleging the new claims regarding safety issues and corporate greed in the Bill of Particulars dated June 28, 2022, as improper notice, improper claims, and a distraction to the jury;
- (1-b) preclude Plaintiffs from offering as evidence or eliciting testimony regarding the Dish Network's Tech Field Guide as irrelevant, inflammatory, unnecessary and prejudicial;
- (1-c) preclude Plaintiffs from offering evidence or eliciting testimony regarding the contents of the sales and equipment bag as irrelevant and unnecessary; and
- (2) ensure that all parties and persons refer to Emma Coffin as her proper pronouns, she/her/hers . . .

NYSCEF Document 54 [Notice of Motion In Limine].

In opposition to Dish and Coffin's motion, Emma Norris and Bruce Norris argue that

the evidence in this case does not go to community safety, public policy, or any other inappropriate or inapplicable proof beyond the facts of this case. Rather, the proof of home infotainment services industry customs and standards goes directly to the elements of duty and breach in respect of whether Defendants' training, supervision and conduct of the work at issue were negligent.

NYSCEF Document 68 [Memorandum of Law in Opposition to Motion In Limine] at 6.

This case is about the fact that Dish prioritized an opportunity to sell Mr. and Mrs. Norris a soundbar and additional equipment over properly training and supervising Defendant Coffin as to the conduct of a service call. It is about the facts as they relate to Mr. and Mrs. Norris' experience with Dish, through Defendant Coffin, as facilitated by Dish's training and supervision.

Id. at 7 (emphasis added).

The Court finds that while Emma Norris and Bruce Norris are entitled to their theory of this case that Emma Norris tripped over the sales bag because "Dish prioritized an opportunity to sell" to Emma Norris and Bruce Norris, based upon the record before the Court, this matter is simply one of ordinary negligence on the part of Coffin in the placement of the sales bag, for which Dish would of course be vicariously liable.

The Court will grant Dish and Coffin's request for an order precluding Emma Norris and Bruce Norris from any statements with respect to industry standards, safety standards, corporate greed, or public policy.

The Court has not been provided with a copy of the Dish Network's Tech Field Guide; whether the same is admitted into evidence will have to await the offering of the same at trial.

The Court will not preclude testimony with respect to the contents of the sales bag; what Emma Norris allegedly tripped over is relevant to the matter at hand.

Finally, with respect to the request that anyone having a need to do so refer to Emma Coffin as she/her/hers, the Court and the attorneys for the parties have reached an agreement with respect the treatment of the Defendant Emma Coffin and no order is therefore required..

NOW, it is hereby

ORDERED AND ADJUDGED that the Defendants Dish Network, L.L.C., Dish Network, Corp., Dish Network Services, L.L.C. and Austin Coffin's motion for an order precluding the Plaintiffs Emma J. Norris and Bruce A. Norris from offering the testimony of Plaintiffs' expert, Gregg Ordon, is hereby granted, and it is further

ORDERED AND ADJUDGED that the Defendants Dish Network, L.L.C., Dish Network, Corp., Dish Network Services, L.L.C. and Austin Coffin's motion for an order precluding the Plaintiffs Emma J. Norris and Bruce A. Norris from offering any statements with respect to industry standards, safety standards, corporate greed, or public policy, is hereby granted, and it is further

ORDERED AND ADJUDGED that the Defendants Dish Network, L.L.C., Dish Network, Corp., Dish Network Services, L.L.C. and Austin Coffin's motion for an order precluding the Plaintiffs Emma J. Norris and Bruce A. Norris from offering Dish Network's Tech Field Guide into evidence is hereby denied, and it is further

ORDERED AND ADJUDGED that the Defendants Dish Network, L.L.C., Dish Network, Corp., Dish Network Services, L.L.C. and Austin Coffin's motion for an order precluding testimony with respect to the contents of the sales bag is hereby denied.

Dated: July 27, 2022

ENTER,



HON. ROBERT E. ANTONACCI II, J.S.C.