

Sayles v Urban Am. Mgt. Corp.

2023 NY Slip Op 34189(U)

November 29, 2023

Supreme Court, New York County

Docket Number: Index No. 155149/2020

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12

Justice

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GORDON SAYLES,

Plaintiff,

- v -

URBAN AMERICAN MANAGEMENT CORP., PUTNAM HOLDING COMPANY, LLC, BSREP UA 3333 BROADWAY LLC, SCHINDLER ELEVATOR CORPORATION, CENTENNIAL ELEVATOR INDUSTRIES INC., ESSENTIAL ELEVATOR, LLC, NEW YORK CITY EDUCATIONAL CONSTRUCTION FUND, RIVERSIDE PARK COMMUNITY (STAGE I), INC., RIVERSIDE PARK COMMUNITY II, LLC, RIVERSIDE PARK COMMUNITY, LLC, UAB PROPERTY MANAGEMENT, LLC, CENTENNIAL ELEVATOR INDUSTRIES INC., CENTENNIAL ELEVATORS IND. CORP.

Defendant.

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INDEX NO. 155149/2020
MOTION DATE 04/18/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131 were read on this motion to/for STRIKE PLEADINGS

The instant action arises out of personal injuries allegedly sustained by Gordon Sayles (plaintiff) when the elevator in which she was riding (the subject elevator) at the premises located at 3333 Broadway, New York, New York 10031 (the building), malfunctioned and dropped several floors. Defendant Schindler Elevator Corporation (Schindler) was the elevator maintenance company at the building on the day of the accident and in the months preceding the accident.

In the course of discovery, Schindler produced a "Function Location Site History Report" (the site history report), which plaintiff asserts indicates that Schindler was on site at least twenty times to service the subject elevator in the six-month period preceding the accident, in response to

complaints about the subject elevator. The site history report contains numerous codes, shorthand, and abbreviations.

By Notice of Discovery and Inspection served on November 30, 2022, plaintiff requested that Schindler produce a witness for a deposition with firsthand knowledge concerning the codes, shorthand, abbreviations, and other information contained in the site history report. By so-ordered stipulation dated January 25, 2023, defendants were to respond to plaintiff's November 30, 2022 notices for discovery and inspection within 45 days. Schindler declined to agree to produce an additional witness as requested by plaintiff, claiming that the information in the site history report is self-explanatory. The instant motion was filed following conference with the Court.

Plaintiff now moves to strike Schindler's answer or for an order precluding Schindler from offering evidence of its alleged willful failure to comply with a discovery order. In the alternative, plaintiff moves for an order compelling Schindler to produce for deposition a supervisor in its office whom he explained would be able to explain the codes, shorthand and abbreviations contained in these key documents. Plaintiff argues that Dennis Walters, the witness produced by Schindler, was unable to explain the shorthand contained in the site history report. Plaintiffs maintain that Mr. Walters testified that he is unaware of the meaning of the codes, but any supervisor in Schindler's office would have more familiarity with them. Therefore, plaintiff argues, an additional deposition of someone with that familiarity is required.

In opposition,¹ Schindler argues that it already produced Dennis Walters for deposition, and that he has extensive knowledge about the relevant facts and circumstances of the case. Schindler maintains that plaintiff's counsel only asked Mr. Walters about a single entry on the site

¹ Plaintiff objects to Schindler's opposition papers as untimely. Specifically, plaintiff argues that the opposition papers should have been filed by April 11, 2023 but that the opposition was filed late on April 14, 2023. As the delay was de minimus and plaintiff timely filed reply papers, the Court considered Schindler's opposition in its decision.

history report and failed to question Mr. Walters about the codes and/or abbreviations in subsequent entries involving relevant elevator service calls. Therefore, Schindler posits that plaintiff fails to articulate why another witness is necessary to explain the additional information the plaintiff seeks. Additionally, Schindler points out that it offered to respond to a written notice for discovery and inspection listing the codes and/or abbreviations which need to be deciphered.

In reply, plaintiff renews its objection to obtaining the meaning of the codes through written discovery requests, as this procedure would be onerous and time-consuming. Plaintiff's counsel also explains that he did not continue to question Mr. Walters as to the subsequent site history report codes and/or abbreviations because Mr. Walters testified that the site history report is not a document that he encounters or reviews as a field mechanic and that a supervisor in his office would be able to explain the document. Thus, plaintiff asserts, it would have been futile to continue such line of questioning.

CPLR 3101 (a) provides 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.” However, “...unlimited disclosure is not mandated, and the rules provide that the court may issue a protective order ‘denying, limiting, conditioning or regulating the use of any disclosure device’ to ‘prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts’.” *Suchorzepka v Mukhtarzad*, 103 AD3d 878, 879 (2d Dept 2013), quoting *County of Suffolk v Long Is. Power Auth.*, 100 AD3d 944, 946 (2012), citing CPLR 3103. “The delicate balance between allowing liberal disclosure and protecting the parties from unnecessary intrusions, is left to the sound discretion of the lower courts.” *Sgambelluri v Recinos*, 192 Misc 2d 777, 779 (Sup Ct, Nassau County 2002), citing *Andon ex rel. Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 745 (2000).

When disclosure is sought from a corporation through a deposition, the corporation has the right to designate, in the first instance, the employee to be examined. *See Rector, Church Wardens and Vestrymen of St. Bartholomew's Church in City of New York v Comm. to Preserve St. Bartholomew's Church, Inc.*, 84 AD2d 516, 516 (1st Dept 1981). Further,

[i]t is well settled that once a party has deposed a defendant's witness, depositions of additional witness employed by that defendant is only warranted when it is established that (1) the witness deposed had insufficient knowledge relative to the issues in the case or was otherwise inadequate; and (2) there is a substantial likelihood that the additional witness sought to be deposed possess information which is material and necessary to the prosecution of the case. *Perez v City of New York*, 43 Misc 3d 1217(A) (Sup Ct, Bronx County 2014), *affd sub nom. Epperson v City of New York*, 133 AD3d 522 (1st Dept 2015).

There is no dispute as to whether plaintiff is entitled to an explanation of the codes, shorthand, and abbreviations contained in the site history report. The only dispute is as to what method or means the parties use to convey that information. However, a “party is generally free to choose both the devices it wishes to use and the order in which it wishes to use them, subject to judicial intervention if the process is abused.” *Weeks Off. Products, Inc. v Chem. Bank*, 178 AD2d 113, 113 (1st Dept 1991)². Rather than using documentary discovery to procure the information sought, plaintiff argues that deposing an additional corporate witness would be the most expeditious route and therefore seeks to exercise its right to select which method to employ.

Here, although plaintiff deposed Mr. Walters, he himself made a “detailed showing” of the necessity of taking additional depositions. Plaintiff demonstrated that Mr. Walters does not have sufficient information as to site history report codes and/or abbreviations and there is a substantial likelihood that the supervisor sought to be deposed possesses information necessary and material to the prosecution of the case. *See Alexopoulos v Metro. Transp. Auth.*, 37 AD3d 232, 233 (1st Dept 2007).

² The CPLR does not establish a priority of use of available disclosure devices. *See Weeks Off. Products, Inc. v Chem. Bank*, 178 AD2d 113, 113 (1st Dept 1991); *see also* Siegel, *New York Practice* § 350 (6th ed) [Note: online version].

Through Mr. Walter's testimony and his reference to another person having greater knowledge, plaintiff has established his entitlement to the deposition of an additional witness with knowledge of the shorthand contained in the site history report. *See Perez v City of New York*, 43 Misc 3d 1217(A) (Sup Ct, Bronx County 2014), *affd sub nom. Epperson v City of New York*, 133 AD3d 522 (1st Dept 2015). Therefore, Schindler must produce a witness for a deposition with firsthand knowledge concerning the codes, shorthand and information contained in the site history report. Mr. Walters suggested that a supervisor in his office would have such knowledge.

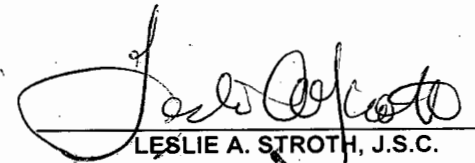
Accordingly, it is

ORDERED that plaintiff's motion is granted; and it is further

ORDERED that Schindler is to produce an additional witness, as detailed above, for a deposition to be scheduled within 30 days of the date of this order.

This constitutes the decision and order of the Court.

11/29/2023
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<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