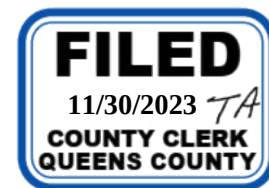


Reed v Watts Water Tech., Inc.
2023 NY Slip Op 35288(U)
November 29, 2023
Supreme Court, Queens County
Docket Number: Index No. 705807/2014
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
JusticeIAS Part 12-----x
THOMAS REED,Index No.:
705807/2014

Plaintiff(s),

-against-

Motion Date:
November 14, 2023WATTS WATER TECHNOLOGIES, INC.,
WATTS REGULATOR CO. INC. and
EDWARDS PLATT & DEELY INC.,Motion Seq. No.: 011Defendant(s).
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The following papers were read on this motion by plaintiff for an order, pursuant to CPLR §3124 seeking an order compelling defendant, Edwards Platt & Deely Inc. make defendant, Edwards, Platt & Deely Inc.'s warehouse located at 368 Wyandanch Road, North Babylon, New York, available for inspection, documenting, photographing and/or videotaping in accordance with CPLR §3120, directing defendants, Watts Water Technologies, Inc. and Watts Regulator Co. Inc., make the Watts facility located in Franklin, New Hampshire, available for inspection, documenting, photographing and/or videotaping in accordance with CPLR §3120 and compelling defendants, Edwards, Platt & Deely, Inc., Watts Water Technologies, Inc. and Watts Regulator Co. Inc. produce witnesses named by plaintiff for deposition. Defendant, Edwards, Platt & Deely, Inc. cross-moves for a protective order pursuant to CPLR §3103 against plaintiff's demand for an inspection. Defendants, Watts Water Technologies, Inc. and Watts Regulator, Inc. cross-moves for a protective order pursuant to CPLR §3103 against plaintiff's deposition directed to defendants, Watts Water Technologies, Inc. and Watts Regulator, Inc.'s property and conditioning entry upon the property of defendants, Watts Water Technologies, Inc. and Watts Regulator, Inc. by plaintiff's counsel and his expert upon the entry of an Order protecting the confidences and proprietary information of defendants, Watts Water Technologies, Inc. and Watts Regulator, Inc.

Papers
Numbered

Notice of Motion, Affirmation, Affidavit,
Exhibits.....E184-198
Notice of Cross Motion, Affirmation, ExhibitsE199-E207
Notice of Cross Motion, Affirmation, Exhibits.....E214-219
Affirmation in Opposition and Reply, Exhibits.....E220-221

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff, Thomas Reed (hereinafter "Reed"), characterizes this action as an "action in strict products liability, negligence and breach of warranty." Plaintiff was allegedly injured on September 16, 2013, when, during the course of his employment as a delivery driver, a portion of a wooden crate he was holding broke and caused plaintiff to fall. Plaintiff alleges that his injuries were caused by the defendants, Watts Water Technologies, Inc. and Watts Regulator, Inc. (hereinafter "Watts") defectively packaging their products for shipment.

Plaintiff Reed now moves for an order pursuant to CPLR §3124 compelling defendant, Edwards, Platt & Deely, Inc. (hereinafter "EP&D") make defendant, EP&D's warehouse located at 368 Wyandanch Avenue, North Babylon, New York available for inspection, documenting, photographing and/or videotaping in accordance with CPLR §3120 and pursuant to notices for discovery and inspection to EP&D on May 23, 2023 and July 26, 2023. Plaintiff Reed also seeks an order pursuant to CPLR §3124 directing defendants Watts, make the Watts facility location at 583 S. Main Street, Franklin, New Hampshire available for inspection, documenting, photographing and/or videotaping in accordance with CPLR §3120 and pursuant to notices for discovery and inspection to defendants, Watts on July 26, 2023. Finally, plaintiff Reed seeks an order compelling defendant, EP&D, and defendants, Watts produce the witnesses named by plaintiff for deposition, pursuant to notices for depositions served on defendants, EP&D and Watts on July 25, 2023, requesting the following named witnesses: Steve Delly, President of defendant, EP&D; Michael Abbruscato, Manager of defendant, EP&D; Bob Zeuner, Engineering Representative of defendant EP&D; Sassi Pour, Watts Senior Packaging Engineer; Tiffany Crosby, Watts Senior Environmental, Health and Safety; James Jalbert, Watts Engineering Manager; Daniel Ouellette, Watts Senior Quality Engineer; Merrill Mudgett and Watts Logistical Coordinator.

Defendant EP&D opposes the motion and cross move for a protective order pursuant to CPLR §3103 precluding plaintiff Reed from conducting a site inspection of defendant EP&D's warehouse

located at 368 Wyandanch Avenue, North Babylon, New York. Defendant, EP&D does not oppose that portion of plaintiff Reed's motion seeking the additional deposition of EP&D witnesses, Steve Delly; Michael Abbruscato and Bob Zuener, with counsel for EP&D stating that "EP&D remains willing and able to appear for a deposition on a mutually agreed upon date."

Defendant Watts opposes plaintiff Reed's motion and also cross-moves for a protective order pursuant to CPLR §3103 seeking to vacate the deposition notices of defendant Watts employees Sassi Pour; Tiffany Crosby; Daniel Ouellette and Merrill Mudgett. Further, the Watts defendants request a protective order be granted directing the inspection of the Watts defendants Franklin, New Hampshire facility be conditioned upon plaintiff executing an appropriate liability and stipulated confidentiality order, and should not take place later than January 15, 2024. Finally, the Watts defendants seek a protective order directing the deposition of Watts Engineering Manager James Jalbert proceed remotely and at a mutually convenient date, not later than January 30, 2024.

In plaintiff Reed's Reply papers, counsel for plaintiff Reed acknowledges defendant EP&D has agreed to appear for the noticed depositions on a mutually agreed upon date and defendants, the Watts defendants have agreed to make the Watts Facility in Franklin, New Hampshire available for inspection, and the Watts defendants agreed to produce James Jalbert for deposition. Counsel for plaintiff Reed also notes that "judicial intervention is unnecessary" with respect to the deposition notices for Sassi Pour; Daniel Ouellette and Merrill Mudgett, as they are no longer employed by the Watts defendants. Plaintiff Reed opposes that branch of defendant EP&D's cross-motion seeking a protective order vacating plaintiff's notices for inspection of EP&D's Wyandanch facility and the branch of Watts defendants cross-motion seeking a protective order vacating plaintiff Reed's notice of deposition to Tiffany Crosby, Watts Senior Environmental, Health and Safety.

CPLR 3101 provides that there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The words "material and necessary" are "to 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" (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). "The test is one of usefulness and reason" (*id.*).

Pursuant to CPLR § 3103(a) the Court "may at any time on its own initiative, or on motion or any party or of any person from whom or about whom discovery is sought, make a protective order

denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or to the courts." Further, "[i]n exercising its discretion regarding whether and to what degree a protective order under CPLR 3103 should issue, a court must strike a balance by weighing [the] conflicting interest in light of the facts of the particular case before it" (*Cynthia B v, New Rochelle Hospital Medical Center*, 60 NY2d 452, 461 [1983]).

CPLR 3120 (1) (ii) provides that a party may serve another party with notice "to permit entry upon designated land or other property in the possession, custody or control of the party . . . served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon." Motions seeking such discovery "are routinely granted when a central issue in the case is the condition of the real property under inspection" (*Iskowitz v Forkosh Constr. Co.*, 269 AD2d 131, 132 [1st Dept 2000]). Here, the condition of the property is not at issue, as plaintiff Reed characterizes this action as an "action in strict products liability, negligence and breach of warranty" relating to the packaging of the Watts defendants products for shipment.

As such, that branch of plaintiff Reed's motion seeking an Order pursuant to CPLR §3124 compelling an inspection of defendant EP&D's warehouse located at 368 Wyandanch Avenue, North Babylon, New York is DENIED and the cross-motion by defendant EP&D for a protective order is GRANTED.

Plaintiff Reed also seeks the deposition of Tiffany Crosby, defendant Watts Senior Environmental, Health and Safety. Defendant Watts objects to the deposition of Ms. Crosby and submits an Affidavit from Tiffany Crosby in which she avers that she did not start her employment with defendant Watts until July 2018, nearly five years after plaintiff Reed's accident.

"A corporate entity has the right to designate, in the first instance, the employee who shall be examined" (*Sladowski-Casolaro v World Championship Wrestling, Inc.*, 47 AD3d 803, 803 [2d Dept 2008]; see *Barone v Great Atl. Pac. Tea Co.*, 260 AD2d 417, 417-418 [2d Dept 1999]). As plaintiff Reed has failed to demonstrate that defendant Watts produced a witness for deposition and that representative had insufficient knowledge, or was otherwise inadequate, plaintiff is not entitled to the deposition of Ms. Crosby. (see *Sladowski-Casolaro v World Championship Wrestling*,

Inc., 47 AD3d at 803; Barone v Great Atl. Pac. Tea Co., 260 AD2d at 418).

The branch of plaintiff Reed's motion seeking an order pursuant to CPLR §3124 compelling the deposition of defendant Watts employee, Tiffany Crosby is also DENIED as premature and the cross-motion by defendant Watts vacating the notice of deposition dated July 25, 2023 for Tiffany Crosby is GRANTED.

Accordingly, plaintiff Reed's motion and defendant EP&D's and defendants Watts' cross-motions are granted, solely to the extent that it is hereby:

ORDERED, that defendant EP&D representatives, Steve Delly; Michael Abbruscato and Bob Zuener and defendant Watts representative, James Jalbert, shall submit to a deposition on or before **January 26, 2024**, to the extent not already done, and continue day to day until completed at such place as shall be mutually agreed to between the parties, or remotely if agreed to between the parties, or, if the parties cannot agree, at a reporting service office located at 89-00 Sutphin Boulevard, Jamaica, New York 11435. There shall be no adjournment of the examinations before trial without further order of this court; and it is further

ORDERED, that plaintiff's motion to compel defendant Watts produce for deposition, Sassi Pour; Daniel Ouellette and Merrill Mudgets is DENIED as the named deponents are no longer employed by defendant Watts; and it is further

ORDERED, plaintiff Reed's motion seeking an Order pursuant to CPLR §3124 compelling an inspection of defendants Watts Franklin, New Hampshire facility is GRANTED to the extent that said inspection shall occur upon plaintiff's executing an appropriate liability and stipulated confidentiality order to be agreed upon by the parties, and that said inspection shall be completed on or before January 19, 2024; and it is further

ORDERED, plaintiff Reed's motion seeking an Order pursuant to CPLR §3124 compelling an inspection of defendant EP&D's warehouse located at 368 Wyandanch Avenue, North Babylon, New York is DENIED and the cross-motion by defendant EP&D for a protective order is GRANTED and plaintiff Reeds notices for discovery and inspection, dated May 23, 2023 and July 26, 2023 are hereby vacated; and it is

ORDERED, plaintiff Reed's motion seeking an order pursuant to CPLR §3124 compelling the deposition of defendants Watts employee, Tiffany Crosby is also DENIED as premature and the cross-motion by

defendant Watts vacating the notice of deposition dated July 25, 2023 for Tiffany Crosby is GRANTED and the notice of deposition is hereby vacated; and it is

ORDERED, that plaintiff is directed to serve a copy of this decision and order with notice of entry upon defendant EP&D and defendant Watts within **ten (10) days** of entry.

All other requested relief not expressly addressed herein is denied.

This constitutes the decision and order of the court.

Dated: November 29, 2023.



Denis J. Butler, J.S.C.

