

**Healthcare Servs. Group, Inc. v
Allegiant Healthcare E., LLC**

2024 NY Slip Op 30223(U)

January 17, 2024

Supreme Court, New York County

Docket Number: Index No. 650015/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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HEALTHCARE SERVICES GROUP, INC.,

Plaintiff,

- v -

ALLEGIANT HEALTHCARE EAST, LLC, ALLEGIANT
HEALTHCARE WEST, LLC, ALLEGIANT HEALTHCARE
AL, LLC

Defendant.

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INDEX NO. 650015/2023

MOTION DATE 01/16/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for DISCOVERY.

Plaintiff's motion to compel the deposition of a corporate designee for defendants is granted as described below.

Background

This litigation arises out of defendants' alleged default under a service agreement entered into by the parties where plaintiff was to provide housekeeping and dining services for facilities owned by defendants.

In this motion, plaintiff seeks to compel the deposition of a corporate designee for defendants. It explains that it previously confirmed the identity of defendants' witness and the deposition date for December 11, 2023. However, plaintiff complains that just 30 minutes before the deposition was to begin, defendants' counsel informed plaintiff's attorney that the

corporate designee could not participate in the deposition. The deposition was cancelled and plaintiff insists that defendants have refused to schedule another one.

In opposition, defendants do not address the December 11, 2023 deposition. Instead, they contend that a January 11, 2024 date was scheduled but that “Due to a business emergency, the corporate representative of Defendants was forced to travel to the west coast and as such I requested a two-hour delay to the deposition” (NYSCEF Doc. No. 58, ¶ 7). Defendants’ counsel contends that he called counsel for plaintiff at least 10 times the day before the deposition, but never heard back. According to counsel for defendants, he appeared at the virtual deposition at around 10:20 a.m. the next day but plaintiff’s counsel did not and he later received an e-mail from plaintiff’s counsel stating that the deposition was concluded.

In reply, plaintiff contends that the January 11, 2024 date was only raised after it made the instant motion. It observes that its counsel and a court reporter appeared at the virtual deposition at 10 a.m. (the scheduled start time) but no one else did. Plaintiff observes that it waited about ten minutes before ending the Zoom meeting. It demands that the deposition be held in person in New York County.

Discussion

The instant motion practice is baffling to the Court. No party disputes that plaintiff is entitled to the deposition of a corporate designee. But for some reason, the parties seem incapable of actually going through with a scheduled deposition. Therefore, this Court must provide guidance.

The subject deposition—the deposition of defendants’ corporate designee—will go forward on or before January 31, 2024. It will take place in-person in New York County at

counsel for plaintiff's office. The deposition *must go forward* absent good cause. Enough is enough.

The Court cannot provide an all-compassing comprehensive definition of what might constitute good cause for delaying the deposition. That said, defendants' assertion in this motion that there was a "business emergency" the day before the deposition, without more detail, is not sufficient. A hospital report, an ambulance report, a death certificate – that would probably be enough—but a vague allusion to a "business emergency" is not even close. The time for playing games with this deposition is over; two busted depositions is more than enough. If the deposition does not go forward (and no good cause is shown), the Court will not hesitate to make the party responsible for the delay pay the legal fees and costs associated with the failed deposition and may even order other penalties. A motion must be made for such relief if the deposition does not go forward.

The conference scheduled for January 25, 2024 is hereby adjourned to February 28, 2024 at 11:30 a.m. The parties shall upload a discovery update by February 21, 2024 that contains 1) a stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement could be reached. Based on these submission the Court will assess whether or not an in-person conference is required. The failure to upload anything may result in the adjournment of the conference or the Court may order that a note of issue be filed.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent that there shall be a deposition of defendants' corporate designee by January 31, 2024, in-person, at plaintiff's attorneys' office in New York County.

1/17/2024

DATE

ARLENE P. BLUTH, 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