SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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LUIS GUAYARA,

Plaintiff,

- v -

H.P.S.O.N.Y., INC.,

Defendant.

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INDEX NO. 157942/2021

MOTION DATE 02/25/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 69, 70, 71, 78, 79, 81, 84

were read on this motion to/for DISCOVERY.

In this labor law action arising from personal injuries sustained by plaintiff at a construction site owned by defendant, plaintiff moves pursuant to CPLR 3124 to compel defendant to provide responses to its post-EBT demands. Defendant opposes the motion. The motion is granted in part.

Plaintiff alleges that, on August 17, 2021, he suffered injuries while working at defendant's premises located at 501 East 73rd Street in Manhattan (the "Premises") when he was struck by falling construction materials. On July 1, 2024, plaintiff served a Post-Deposition Notice for Discovery and Inspection, which demanded that defendant produce:

1) All contracts, purchase orders, and receipts for construction work done at the Premises in the 60 days prior to plaintiff's accident;
2) All purchase orders, bills, invoices, and receipts for equipment or supplies used for construction work at the Premises in the year prior to, and 60 days subsequent to, plaintiff's accident;
3) All entries in the "AptFolio" database (a bookkeeping system employed by defendant) regarding the Premises for the 120 days prior to plaintiff's accident;
4) All books, records, accounts, and federal, state, and local tax returns/filings made for the Premises and defendant for the 3 years prior to plaintiff's accident;

5) All personnel records, including copies of checks, salary ledgers, last known addresses, and contact information for all of defendant's employees for the 3 years prior to, and 1 year subsequent to, plaintiff's accident; and
6) All video and audio recordings, photographs, and correspondence, including emails, text messages, and message attachments, concerning either plaintiff or his accident.

When defendant did not timely respond to this demand and a subsequent good faith letter dated October 22, 2024, plaintiff filed the instant motion to compel. In conjunction with the filing of its opposition, defendant served plaintiff with responses to the above demands. Defendant produced no responsive documents—it objected to plaintiff's first five demands as overbroad but represented that it was nevertheless conducting a search for responsive documents and, with regard to the sixth demand, it represented that it had no responsive photographs or videos in its possession.

By an interim order dated December 18, 2024, the court, *inter alia*, directed defendant to submit a supplemental response to plaintiff's demands and adjourned the motion to February 25, 2025. Defendant thereafter filed a supplemental response that again did not attach any responsive documents and was substantially identical to its initial response, objecting to the bulk of plaintiffs demands as overbroad and denying that it had any responsive photographs or videos in its possession other than materials previously received from plaintiff.

Disclosure in New York civil actions is guided by the principle of "full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR 3101[a]). The phrase "material and necessary" is "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" (*Kapon v Koch*, 23 NY3d 32, 38 [2014] [internal quotation marks omitted]). Thus, "[a] party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is 'material and necessary'—i.e., relevant" (*Forman v Henkin*, 30 NY3d 656, 661 [2018]). Further, the need for discovery must be weighed against any special burden to be borne by the party opposing discovery (*id.* at 662). A party demanding the production of documents thus bears the burden of tailoring its demand to specify the items sought with "reasonable particularity" (*Mendelowitz v*

Xerox Corp., 169 AD2d 300, 304 [1st Dept. 1991]). Requests for "all" documents relating to a certain subject are frowned upon and generally viewed as indicating a lack of the requisite specificity (*id.* at 303-04).

Applying this standard, plaintiff's motion is denied to the extent is seeks to compel further responses to Demand Nos. 1-5, as these demands are overbroad and not "reasonably calculated" to yield information relevant to plaintiff's claims (*see Forman*, 30 NY3d at 661). As mentioned, courts view document requests for "any and all" documents as indicative of a lack of the requisite specificity (*see Mendelowitz*, 169 AD2d at 303-04). Such a demand may still be proper in certain limited circumstances, provided the demand relates to specific subject matter and thus does not impede a ready identification of the particular things to be produced (*see id.*). That is not the case here, as plaintiff's demands are not reasonably tailored to yield discovery relevant to its allegations (*see Craig v New York Tel. Co.*, 123 AD2d 580, 581 [1st Dept. 1986] [demand lacked reasonable particularity where it was so broad that most responsive documents would "probably [be] irrelevant"). For example, the demands for all records regarding construction work at the Premises and all bookkeeping entries pertaining to the Premises for several months prior to the accident (Demand Nos. 1-3) bear no obvious connection to plaintiff's claims, and many if not most of the documents responsive to these demands can be expected to contain no relevant information. So too the demands for several years' worth of defendant's accounting, tax, and personnel records (Demand Nos. 4-5). Indeed, in seeking to compel the production of these documents, plaintiff notably does not even attempt to justify their relevance to the case at bar.

Further, with respect to the demand for defendant's tax records, "[a] demand for the production of tax returns is disfavored and requires 'a strong showing of necessity,' and the inability to obtain the information from other sources" (*Demurjian v Demurjian*, 184 AD3d 505, 505–06 [1st Dept. 2020], quoting *Weingarten v Braun*, 158 AD3d 519, 520 [1st Dept. 2018]; *see Williams v New York City Hous. Auth.*, 22 AD3d 315, 316 [1st Dept. 2005]; *Gordon v Grossman*, 183 AD2d 669, 670 [1st Dept. 1992]). Plaintiff makes no such showing here.

As to Demand No. 6 for photographs and video of the accident, plaintiff insists that a further response is necessary despite defendant's repeated denial that it has any responsive

material in its possession. Plaintiff points to the deposition testimony of defendant's representative, Robert Galpern, wherein Galpern testified regarding a short video purportedly depicting the accident. Plaintiff, however, quotes selectively from Galpern's testimony, and conspicuously ignores Galpern's explanation that he received the subject video clip from plaintiff, and that the clip was no longer in his possession because it had been sent using a messaging application with a "disappearing messages" feature that automatically deleted it from his phone after a short period.

Nevertheless, when the response to a discovery request is that there are no responsive documents within the responding party's possession, custody, or control, that party is required to provide a *Jackson* affidavit to that effect, which defendant has not done (*see Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept. 1992]). Therefore, plaintiff's motion is granted to the extent that defendant is directed to produce documents responsive to Demand No. 6 or else provide a *Jackson* affidavit.

Accordingly, it is

ORDERED that plaintiff's motion to compel discovery is granted to the extent that defendant is directed to produce, within thirty (30) days of the date of this order, documents responsive to Demand No. 6 from plaintiff's Post-Deposition Notice for Discovery and Inspection or else a *Jackson* affidavit, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

4/22/2025
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE