

Dawkins v Bailey House, Inc.

2025 NY Slip Op 32519(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 160709/2019

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

-----X

LEWIS DAWKINS,

Plaintiff,

- v -

BAILEY HOUSE, INC., PARK 121 REALTY LLC, ELTECH
INDUSTRIES, INC.,

Defendant.

-----X

PARK 121 REALTY LLC

Plaintiff,

-against-

THE CITY OF NEW YORK, FIRE DEPARTMENT OF THE
CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 160709/2019
MOTION DATE N/A
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595734/2022

The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124 were read on this motion for DISCOVERY.

Defendant Bailey House, Inc. (“Bailey”) moves, by order to show cause pursuant to CPLR §§ 3124, 3106, and 3101, for an order compelling co-defendant Park 121 Realty LLC (“Park”) to produce Simon Seaton (“Mr. Seaton”) for deposition as a representative of Park. Bailey asserts that the previously designated witness, Chaim Babad (“Mr. Babad”), is an inadequate and conflicted witness, and that Mr. Seaton is uniquely situated to provide unbiased, material testimony essential to the claims and defenses at issue.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an incident on October 1, 2019, in which Plaintiff Lewis Dawkins (“Plaintiff”) was allegedly injured when an elevator malfunctioned at 1751 Park Avenue, New York, New York. Plaintiff claims that the elevator, located in a building owned by Park and partially leased to Bailey, became stuck between the second and third floors. Emergency responders from the FDNY rescued Plaintiff, who thereafter commenced suit against Bailey, Park,

and Eltech Industries, Inc., asserting claims of negligence in the maintenance and operation of the elevator.

All defendants joined issue by early 2020. Park subsequently filed a third-party action against the City of New York and the FDNY, which remains pending. A prior motion for summary judgment by the City was denied as premature by this court on August 13, 2024, pending the completion of discovery.

On March 25, 2025, Park produced Mr. Babad for deposition as its representative. Following that deposition, Bailey requested that Park produce another representative, Mr. Seaton, citing significant concerns regarding Mr. Babad's credibility and neutrality, as well as inconsistencies between his testimony and the documentary evidence. When the parties could not reach an agreement on this issue, the court granted Bailey leave to file this motion.

ARGUMENTS

Bailey contends that it is entitled to depose Mr. Seaton due to Mr. Babad's documented conflict of interest and the contradictions between his testimony and documentary evidence. Bailey highlights that Babad Management, a separate company solely owned by Mr. Babad, entered into a maintenance contract with Eltech and was invoiced for elevator services, despite Mr. Babad's claim that the building was managed by Park and not by Babad Management. Bailey further asserts that Mr. Babad has been adjudicated to have breached his fiduciary duty to Park with respect to the same building, and that Mr. Seaton, as a co-owner of Park and the signatory to the lease with Bailey, possesses critical knowledge regarding the roles of Park, Babad, and Babad Management.

Park opposes the motion, arguing that Mr. Babad testified fully and knowledgeably as Park's representative. Park maintains that Bailey's claims could be addressed through cross-examination at trial and that no additional deposition is warranted because Bailey has failed to demonstrate that another witness is likely to possess new, material information.

DISCUSSION

The motion is granted.

Under CPLR §§ 3101 and 3106, a party is entitled to full disclosure of all matters that are "material and necessary" to the prosecution or defense of an action. The scope of discovery is broad and includes testimony that may lead to the disclosure of admissible evidence (*Andon v. 302-304 Mott St. Assoc.*, 94 NY2d 740 [2000]). While duplicative or cumulative discovery is disfavored, courts have long held that a second deposition may be warranted upon a detailed showing that the initial witness lacked knowledge or was otherwise inadequate (*Defina v. Brooklyn Union Gas Co.*, 217 AD2d 681, 682 [2d Dept 1995]; *Monti v. Shaw*, 183 AD3d 722 [2d Dept 2020]).

Here, Bailey has more than satisfied that burden.

The deposition of Mr. Babad revealed significant credibility issues and potential bias stemming from his dual role as both co-owner of Park and sole owner of Babad Management. Mr. Babad testified that Babad Management had no involvement in the building's maintenance; however, the documentary record flatly contradicts this assertion. Maintenance invoices and contracts from Eltech name Babad Management—not Park—as the customer and party responsible for the elevator maintenance. These facts are not minor discrepancies—they go directly to the heart of liability in this action and whether Babad Management, a non-party corporation, may be a proper third-party defendant.

Compounding this is the substantial and well-documented litigation history between Mr. Babad and Mr. Seaton, who is also a co-owner of Park. In a separate action in this court, Justice Andrew Borrok granted summary judgment against Mr. Babad, finding him liable for breaching his fiduciary duty to Park by entering into self-dealing transactions that benefited another of his companies. In another pending matter, Mr. Seaton has asserted claims for conversion of his personal property from an office at the subject premises. This litigation history not only evidences Babad's breach of trust but also underscores his fundamental conflict of interest in representing Park in this action. An adverse judgment regarding fiduciary conduct speaks directly to his credibility and further supports the necessity of an unbiased witness.

Mr. Seaton, by contrast, is uniquely situated to provide the clarity that Mr. Babad's testimony cannot. As a co-founder of Park and the signatory to the lease with Bailey, Mr. Seaton possesses direct knowledge of the ownership and management structure of the building, the involvement of Babad Management, and the parties' respective responsibilities. Additionally, Mr. Seaton's prior office at the property, which he alleges was improperly taken by Mr. Babad, further ties him to the daily operations and inner workings of Park and provides further factual basis for his anticipated testimony.

Contrary to Park's argument, this is not a fishing expedition. Bailey has articulated a specific and credible need for the testimony, grounded in conflicting documentary evidence, a judicial finding of breach of fiduciary duty, and relevant litigation history. Mr. Babad's testimony cannot be assumed to fairly and fully represent Park's interests where his loyalties demonstrably diverge. Discovery is not a mere formality; it is the vehicle by which the truth-seeking function of litigation is advanced. To deny this motion would be to permit a party to shield discoverable facts behind the veneer of a conflicted and discredited representative.

Moreover, as the Appellate Division, First Department, has made clear, “[p]retrial disclosure extends not only to admissible proof but also to testimony or documents which may lead to the disclosure of admissible proof” (*Polygram Holding, Inc. v. Cafaro*, 42 AD3d 339, 340 [1st Dept 2007]). The credibility of Mr. Babad and the extent of Babad Management's control over elevator maintenance are squarely relevant and may support future third-party practice or cross-claims. Bailey should not be required to wait until trial to uncover basic facts concerning ownership and operational responsibility.

Accordingly, it is hereby:

ORDERED that the motion of Defendant Bailey House, Inc. to compel Park 121 Realty LLC to produce Simon Seaton for deposition pursuant to CPLR §§ 3101, 3106, and 3124 is granted; and it is further

ORDERED that Park 121 Realty LLC shall produce Simon Seaton for deposition on the date mutually agreed upon by the parties on the record on July 15, 2025 – namely **Monday November 24, 2025**; and it is further

ORDERED that the parties shall appear for a status conference on August 5, 2025 at 2:00 PM in the Differentiated Case Management Part (80 Centre Street, Room 103, New York, NY) to confirm acknowledgment of the directives contained within this order and to schedule any further discovery deadlines.

This constitutes the decision and order of the court.

7/15/2025
DATE

HASA A. KINGO, 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