

**Jobe v Chelsea Hotel Owner, LLC**

2025 NY Slip Op 33197(U)

August 20, 2025

Supreme Court, New York County

Docket Number: Index No. 161445/2019

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 161445/2019

LINDA JOBE and THOMAS C. POSS,

MOTION DATE 04/22/2025

Plaintiffs,

MOTION SEQ. NO. 002

- v -

CHELSEA HOTEL OWNER, LLC,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 146, 147, 148, 149, 150, 151, 152

were read on this motion to/for DISCOVERY

Defendant Chelsea Hotel Owner, LLC ("CHO" or "defendant") moves to compel plaintiffs Linda Jobe ("Jobe") and Thomas Poss ("Poss") (collectively "plaintiffs") to "provide the relevant discovery described in further detail below within fourteen days" or to "preclud[e] Plaintiffs from relying upon evidence or argument at trial that they have refused to search for or produce."

Plaintiffs oppose the motion, arguing that: it is improper because the Chelsea Hotel cases are not consolidated; they have not refused to search for or produce any relevant evidence; and the motion is not accompanied by "the requisite good faith affirmation pursuant to 22 NYCRR 202.7[.]" The court's decision is as follows.

This is a six-year-old case where some discovery has taken place. It is unnecessary to recite the case history, as the parties and the court are well-aware of the alleged facts.

Since 2022, the court has "so ordered" six (6) discovery stipulations dated, May 18, 2022, May 9, 2023, December 8, 2023, March 7, 2024, June 20, 2024, and September 5, 2024, all containing the same language except for the discovery deadline date.

Defendant has sent plaintiffs deficiency letters, and the parties have held four (4) meet-and-confer calls in 2023 and 2024. All agreed-upon discovery deadlines have come and gone.

An email dated February 14, 2024, reflects that, at a meet-and-confer regarding outstanding discovery on October 4, 2023, the parties agreed that:

Plaintiff Jobe will provide copies of her driver's license and documents supporting her allegation of vision impairment due to macular degeneration; Plaintiffs will provide documents supporting their damages, including out-of-pocket expenses; [and] Plaintiffs will reproduce photos and videos with metadata.

Defendant contends, however, that at a subsequent meet-and-confer on April 10, 2024, plaintiffs reneged on their agreement and, to date, have not produced any of the information they agreed to produce, including: (i) "documents concerning Ms. Jobe's alleged vision impairment, including any communications from Dr. Richard Hollander and Dr. Richard Nissen"; (ii) "all versions of Ms. Jobe's lease, including her first lease"; (iii) "Ms. Jobe's utility bills"; (iv) "documents relevant to Plaintiffs' damages claims, including medical bills related to Ms. Jobe's vision impairment for treatment and vision equipment"; and (v) "approximately 300 photographs with metadata to indicate, among other things, the dates on which the photographs were taken, as called for by Defendant's request for production."

Plaintiffs have also failed to produce documents responsive to the following requests in defendant's amended first set of requests for production of documents, dated May 31, 2022:

- i. Request Nos. 1-5, which seek documents relating to plaintiffs' residential lease(s);
- ii. Request No. 6, which seeks communications between plaintiffs and NYC DOB;
- iii. Request Nos. 12-17, which seek documents related to Ms. Jobe's visual impairment, her related functional limitations, and the identity of her treating physicians;
- iv. Request No. 18, which seeks documents and communications concerning plaintiffs' claim the building is of "non-fireproof" construction, as alleged in their complaint;
- v. Request Nos. 20-25, which seek documents regarding the method of heating plaintiffs' apartments, including documents related to "the conversion of the building from steam to electrical heat, the removal of steam piping in the tunnel between the

- Hotel Chelsea and the building where Plaintiffs reside, any ‘cut off’ of steam heat in Plaintiffs’ apartments, and the use of electric space heaters’; and
- vi. Request No. 29, seeking communications between plaintiffs and NYC HPD, which are “relevant to Plaintiffs’ claims [in the complaint] that their building is ‘categorized by the New York City Department of Housing Preservation and Development [] as a building in a high level of physical distress.’”

Plaintiffs also failed to provide required contact information for seven individuals identified as possessing relevant information in their answer to defendant’s Interrogatory No. 24.

As noted, the parties executed six (6) discovery stipulations over a three-year time period, participated in two meet-and-confers in January 2024, and communicated via email in February 2024 regarding outstanding discovery. The discovery sought by defendant, consisting of responses to document demands and a supplemental interrogatory response, is simple and straightforward. There is, however, no indication in the record before the court that plaintiffs have even attempted to supplement their discovery responses to cure the deficiencies identified by defendant.

An affidavit regarding the unavailability of documents that are the subject of a discovery order must document a thorough search conducted in good faith, and should include details such as “where the subject records were likely to be kept, what efforts, if any, were made to preserve them, whether such records were routinely destroyed, [and] whether a search [was] conducted in every location where the records were likely to be found” (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept. 1992]).

Here, the affidavits submitted by Jobe and Poss mirror one another and contain absolutely no specific information regarding the search(es) they conducted or any relevant information as to the discovery requests. The affidavits lack any relevant information regarding where, when, or what was searched, or any indication of how plaintiffs conducted the search(es). In fact, the Jobe and Poss affidavits are exactly the same, except for the signature, as the Susan Berg, Carlson and Caster affidavits. This type of gamesmanship, which is nothing more than a poorly designed strategy to thwart defendant’s discovery efforts, impairs the efficient functioning of the courts and the adjudication of claims.

Based on the foregoing, defendant's motion is granted to the following extent:

- 1) Plaintiffs shall supplement their respective responses to defendant's amended first set of requests for production of documents, more specifically their responses to Request Nos. 1, 2, 3, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25 and 29.
- 2) Plaintiffs shall supplement their response to defendant's Interrogatory No. 24 to provide the last known address for each of the individuals identified in their initial response.
- 3) Plaintiffs shall produce the following documents: : (i) "documents concerning Ms. Jobe's alleged vision impairment, including any communications from Dr. Richard Hollander and Dr. Richard Nissen"; (ii) "all versions of Ms. Jobe's lease, including her first lease"; (iii) "Ms. Jobe's utility bills"; (iv) "documents relevant to Plaintiffs' damages claims, including medical bills related to Ms. Jobe's vision impairment for treatment and vision equipment"; and (v) "approximately 300 photographs with metadata to indicate, among other things, the dates on which the photographs were taken, as called for by Defendant's request for production."

The balance of defendant's motion for sanctions is denied.

Accordingly, it is hereby


**ORDERED** that defendant's motion is granted to the extent that, within thirty (30) days of the date of this order, plaintiffs shall (1) supplement their respective responses to Request Nos. 1, 2, 3, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25 and 29 in defendant's amended first set of requests for production of documents, (2) supplement their response to defendant's Interrogatory No. 24 to provide the last known address for each of the individuals identified in their initial response, and (3) produce the following: (i) "documents concerning Ms. Jobe's alleged vision impairment, including any communications from Dr. Richard Hollander and Dr. Richard Nissen"; (ii) "all versions of Ms. Jobe's lease, including her first lease"; (iii) "Ms. Jobe's utility bills"; (iv) "documents relevant to Plaintiffs' damages claims, including medical bills related to Ms. Jobe's vision impairment for treatment and vision equipment"; and (v)

“approximately 300 photographs with metadata to indicate, among other things, the dates on which the photographs were taken,...” and the motion is otherwise denied; and it is further

**ORDERED** that, on or before September 29, 2025, the parties shall file a joint letter on NYSCEF under index number 161445/2019 detailing for the court the status of discovery compliance; and it is further

**ORDERED** that the parties shall appear at 80 Centre Street, New York, New York for an in-person compliance conference on September 30, 2025, at 2:30 pm.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

<u>8/20/2025</u> DATE					 LYNN R. KOTLER, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE