

Arthur N. Abbey, LLC v CB Tarter Prop. LLC

2025 NY Slip Op 34856(U)

December 12, 2025

Supreme Court, New York County

Docket Number: Index No. 655140/2021

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

-----X

ARTHUR N. ABBEY, LLC,
Plaintiff,

- v -

CB TARTER PROPERTY LLC,
Defendant.

-----X

CB TARTER PROPERTY LLC
Plaintiff,

-against-

ROCKLEDGE SCAFFOLD CORPORATION
Defendant.

-----X

INDEX NO. 655140/2021
MOTION DATE N/A
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595503/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102

were read on this motion to/for DISCOVERY.

Plaintiff's motion to compel additional depositions is denied and defendant's motion for a protective order precluding further depositions is granted.

Background

Plaintiff brings this breach of contract action arising out of an RPAPL 881 dispute. It explains that defendant owns a property right next door and was constructing a multi-story building; pursuant to a 2016 licensing agreement, defendant was to restore, repair and replace any areas of plaintiff's property that were damaged as a result of the construction. Plaintiff contends that the construction work damaged its property, and defendant did not abide by the terms of the licensing agreement.

Here, plaintiff moves to compel two additional depositions from defendant – those of Charles Blaichman and Elias Kougemitros. Defendant opposes and cross moves for a protective order precluding the production of any further witnesses.

Plaintiff explains that it deposed Megan Tarter, a principal of defendant, on April 29, 2025, but Ms. Tarter had no involvement in the negotiation or execution of the licensing agreement, had no knowledge of its terms or of defendant’s obligations under the agreement, and had no involvement in the development or construction work. Plaintiff continues that Ms. Tarter identified Mr. Blaichman and Mr. Kougemitros during her deposition as having relevant information. Ms. Tarter identified Mr. Blaichman as a principal of defendant and the sole member of CB Developers, defendant’s contractors. Ms. Tarter identified Elias Kougemitros as an employee who acted as project manager of CB Developers during the construction project and who communicated with plaintiff throughout the project. As to Charles Blaichman, plaintiff contends that his testimony is necessary as he was involved in negotiating, and ultimately signed, the licensing agreement on behalf of defendant. Mr. Blaichman was also the person to whom plaintiff addressed complaints during and after the construction.

Plaintiff summarizes its complaints about Ms. Tarter’s testimony claiming that she cannot speak to: 1) the intent or negotiation of the licensing agreement, 2) how or whether Defendant complied with contractual obligations such as lot line window closures, site repair, or insurance coverage, 3) or if access to the premises was denied as she claims and on what grounds.

Plaintiff noticed the depositions of Elias Kougemitros and Charles Blaichman on June 19, 2025, but defendant refused to produce them. In further support of its position, plaintiff argues that “Defendant’s own counsel initially suggested Mr. Kougemitros as a witness, effectively acknowledging his relevance and knowledge of the facts at issue” (NYSCEF Doc. No. 86

[internal citation omitted]). Plaintiff elaborates on this point in its attorney affirmation submitted in support of this motion stating, “Mr. Ayers [defendant’s attorney] was originally against producing Megan Tarter as a witness and instead offered to produce Elias Kougemitros because he believed Mr. Kougemitros had the most knowledge regarding the issues involved in this action” (NYSCEF Doc. No. 87 at ¶ 6).

Plaintiff also complains that defendant has not responded to plaintiff’s notices to produce documents in connection with the deposition of Ms. Tarter, served on March 6, 2025 (before the deposition) and June 10, 2025 (after the deposition). Plaintiff therefore argues that “Defendant’s refusal to produce responsive documents has further hindered Plaintiff’s ability to fully explore the factual record. This makes the requested depositions even more critical to Plaintiff’s ability to prepare for trial and evaluate claims” (NYSCEF Doc. No. 86). Plaintiff, however, does not move to compel the production of this information.

Defendant argues that plaintiff is trying to get a second and third bite of the apple, that Ms. Tarter had sufficient knowledge to answer the questions posed to her at her deposition and that plaintiff was given the option to depose Mr. Kougemitros, but that plaintiff insisted on deposing Ms. Tarter instead. Defendant continues that it advised plaintiff on more than one occasion that Mr. Kougemitros was the more appropriate witness, and that it only produced Ms. Tarter at plaintiff’s insistence. Defendant suggests that Ms. Tarter was chosen as a witness simply to harass, annoy, and pressure her following the collapse of a decades-long relationship between Ms. Tarter and Mr. Abbey (plaintiff’s principal). Defendant details that Mr. Abbey was present at the deposition. And Plaintiff’s counsel writes that defendant’s counsel “acknowledged that Ms. Tarter had no knowledge of the facts at issue in this action and expressed frustration that her deposition lasted approximately four and a half hours despite her lack of knowledge”

(NYSCEF Doc. No. 95 at ¶ 9). In her deposition testimony, Ms. Tarter states that she had been neighbors with Mr. Abbey since 1981 (NYSCEF Doc. No. 92 at 112). She detailed the growing animosity that developed in the neighborly relationship as a result of this project which required plaintiff, inter alia, to allow protective structures and workers on its property and required plaintiff's lot line windows to be covered. In response to a question about why Mr. Abbey might have blocked access to his property on a certain occasion, Ms. Tarter responded, "My basis, he was upset with me as a neighbor" (*id.* at 73).

Discussion

Courts are given broad leeway to direct discovery and "CPLR 3103 (a) gives the courts wide discretion to preclude or appropriately limit the use of any particular disclosure device where it determines that the use of that device would cause unreasonable annoyance or embarrassment (*Jones v Maples*, 257 AD2d 53, 56 [1st Dept 1999]). Here, the Court finds that permitting plaintiff to conduct these depositions would cause unreasonable annoyance and therefore denies plaintiff's motion in its entirety.

Firstly, the Court is unconvinced by plaintiff's arguments that there is any reason at all to depose Mr. Blaichman. The fact that Mr. Blaichman negotiated and signed the licensing agreement does not necessitate his deposition. When asked whether she understood that CB Tarter was a party to the agreement and subject to the obligations under the agreement, Ms. Tarter responded in the affirmative, at which point the agreement was marked as an exhibit, and she proceeded to answer questions about the agreement (NYSCEF Doc. No. 92 at 14). Plaintiff does not need to depose Mr. Blaichman just because he was involved in negotiating the agreement and signed it. The agreement was reduced to a writing.

Secondly, the parties have left no doubt that that Mr. Kougemitros would have been the better person to sit for a deposition. But the parties have also left no doubt that defendant told plaintiff several times that Mr. Kougemitros would be the better person to depose, and that plaintiff insisted on deposing Ms. Tarter. The record suggests that plaintiff's insistence that Ms. Tarter be deposed despite being explicitly told that Mr. Kougemitros would be the better witness may have been based on personal animus between Ms. Tarter and Mr. Abbey. Whether or not that is true, the fact remains the same – plaintiff had its opportunity to depose Mr. Kougemitros and insisted on deposing somebody else. Defendant gave plaintiff the witness that plaintiff requested despite repeated warnings that she was not the best witness. Plaintiff wanted Ms. Tarter, plaintiff insisted on Ms. Tarter, and plaintiff got Ms. Tarter. Now, plaintiff is stuck with its choice.

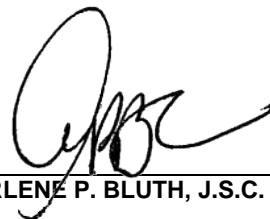
Accordingly it is hereby

ORDERED that plaintiff's motion is denied in its entirety; and it is further

ORDERED that the defendant's cross-motion for a protective order precluding the deposition of further witnesses on behalf of CB Tarter Property is granted.

See Doc. No. 105 regarding the next conference.

12/12/2025
DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>
				OTHER