

Lercara Provisions, Inc. v Boar's Head Provisions Co., Inc.
2025 NY Slip Op 35307(U)
July 25, 2025
Supreme Court, Kings County
Docket Number: Index No. 503667/2019
Judge: Reginald A. Boddie
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 25th day of July 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X

LERCARA PROVISIONS, INC. and SARO ANTHONY
LERCARA,

Index No. 503667/2019

Plaintiffs,

Cal. Nos. 15-17 MS 9-11

-against-

Decision and Order

BOAR’S HEAD PROVISIONS CO., INC., and FRANK
BRUNCKHORST CO., LLC,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 9

196-202, 214

MS 10

204-207, 215, 217-218

MS 11

208-209, 216

Plaintiffs’ motion to vacate and compel, and the cross-motions for protective orders interposed by defendants and non-party Robert Martin Sr. are decided as follows:

Background

Plaintiffs move (i) to vacate the directive set forth in the Court’s March 4, 2025 Conference Order limiting their deposition of non-party Robert Martin Sr. (“Martin”) to 2.5 hours, and (ii) to compel the resumption of the deposition of non-party witness Joseph Pizzurro (“Pizzuro”). Plaintiffs argue that Martin, whom they identify as the President or owner of defendant Boar’s

Head Provisions Co., Inc. (“Boar’s Head”), has critical knowledge concerning company practices, which practices are germane to the case. Plaintiffs contend that the limited time restriction imposed by the Court as to the duration of the deposition deprives them of the opportunity to conduct a full examination of the witness, particularly since the April 8, 2025 deposition of Martin was prematurely terminated due to a dispute arising from Martin’s attorney making a statement on the record. Plaintiffs further argue that the deposition of Pizzurro was left incomplete and must thus be resumed.

Defendants oppose the motion and cross-move for a protective order barring the resumption of Martin’s deposition. Defendants assert that plaintiffs fail to meet the requirements established pursuant to CPLR 2221 to vacate the March 4 , 2025 Conference Order and offer no evidence that Martin has relevant knowledge. Defendants maintain that Martin had no involvement with Plaintiffs’ route or alleged employment relationship and that the Court appropriately exercised its discretion in limiting the deposition to a 2.5-hour time frame. Defendants further argue that plaintiffs waived the resumption of Pizzurro’s deposition by ending it after nearly seven hours notwithstanding the witness’s availability to continue testifying. Defendants additionally seek a protective order under CPLR 3103, asserting that plaintiffs’ counsel disrupted Martin’s April 8 deposition by refusing to allow Martin’s personal attorney to speak regarding Martin’s health, speaking over counsel, and creating a hostile environment that led to the premature termination of the deposition. Defendants allege that any further deposition of Martin would prove to be duplicative, burdensome and prejudicial. Defendants seek to shift the costs associated with Martin’s deposition, should such deposition proceed.

Non-party Martin joins in the cross-motion, adopting defendants’ arguments and adding that his age and health condition independently warrant protection. Martin’s counsel argues that

plaintiffs' conduct made it impossible to proceed with the April 8, 2025 deposition and that further attempts to depose him would serve only to harass the witness.

In reply, plaintiffs argue that CPLR 2221(a) permits vacating an order without satisfying the stricter standards applicable in the context of renewal or reargument motions. Plaintiffs further assert that the March 4, 2025 limitation was imposed without motion practice or full briefing, depriving plaintiffs of the opportunity to be heard as to this core matter. Plaintiffs contend that they are entitled to seven hours for a deposition pursuant to the Commercial Division rules and that, by virtue of Martin's senior position, he is a critical witness. Plaintiffs deny engaging in misconduct during the April 8, 2025 deposition and assert that defendants are improperly seeking to shield a key witness from testifying while embellishing the circumstances that led to the deposition's premature conclusion.

In reply, defendants posit that plaintiffs have shown no legitimate basis to depose Martin, offering mere speculation as to the nature of Martin's knowledge of relevant matters notwithstanding ample evidence establishing his lack of involvement in the events underlying this proceeding. Defendants note that Martin, a 75-year-old beset with health issues, was made available for a limited deposition by court order, which plaintiffs disrupted through misconduct, including blocking Martin's counsel from memorializing his medical condition on the record. Defendants claim that plaintiffs misrepresent the record, disregard court directives and engage in discovery tactics aimed to harass the defense.

Discussion

Motion to Compel the Pizzurro Deposition

Plaintiffs move to compel the resumption of the deposition of non-party witness Pizzurro pursuant to CPLR 3124, arguing that the prior session was incomplete and that they are entitled to

a full seven-hour deposition. Notably, Plaintiffs' counsel effectively seeks the same relief previously requested, and denied, during the March 4, 2025 compliance conference. Having failed to present any new facts or arguments, plaintiffs' motion to compel is denied as the outcome of the March 4, 2025 Conference Order constitutes the law of the case.

The record reflects that Pizzurro's deposition commenced at 10:07 a.m. on February 18, 2025, and continued until 5:05 p.m., an aggregate duration a scant two minutes short of seven hours, inclusive of breaks. When the session was nearing its conclusion, plaintiffs' counsel, Mr. Genovesi, abruptly withdrew a question mid-sentence and stated on the record, "Okay. We're at 5:05, I'm going to adjourn the deposition" (*see* NYSCEF Doc No. 200, Pizzuro EBT Tr, at 282, lns. 6–7). Defense counsel immediately objected, asserting that "[o]ur position is this deposition has ended, it's over" (*id.* at 282, lns. 8–9), to which Mr. Genovesi replied, "Okay. I'm adjourning the deposition" (*id.* at 282, lns. 10–11).

At no point during or after this exchange did plaintiffs' counsel identify any remaining topics of inquiry, request additional time, or indicate an intention to resume the deposition at a later juncture. The transcript demonstrates a mutual decision on the part of the parties to conclude the deposition, without any attempt to coordinate a continuation date. The remark "I'm going to adjourn the deposition" was not accompanied by any indication that the session would resume later that day, the next day, or within a reasonable period. Rather, Plaintiffs now seek to compel additional testimony after having effectively declared an indefinite adjournment of the deposition. This is all the more unreasonable in that Pizzurro traveled from out of state to appear for the deposition, and all participants - including the witness, defense counsel, and the court reporter - were present and ready, willing and able to proceed with the testimony. Nonetheless, Plaintiffs' counsel opted to bring the session to an end without explanation or scheduling a follow-up. Of

equal import, Plaintiffs fail to specify in the context of the present motion (i) how much additional deposition time, if any, they believe remains; and (ii) the additional topics that they wish to explore with the witness, propounding instead a mere generalized request to resume the deposition.

As plaintiffs were granted a full and fair opportunity to examine Pizzurro and voluntarily chose to conclude the deposition after nearly seven hours without any proposal to continue on a specific later date, and since plaintiffs failed to establish that relevant material remains undiscovered and that their inability to obtain it is not attributable to their own inaction, the branch of plaintiffs' motion to compel the continued deposition of Pizzurro is denied.

Motion to Vacate

Plaintiffs move, pursuant to CPLR 2221 (a), to vacate the portion of this Court's March 4, 2025 Conference Order limiting their deposition of non-party Martin to 2.5 hours. Pursuant to CPLR 2221(a), "[a] motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it." Plaintiffs argue that the Court "sua sponte limit[ed] Plaintiffs to taking the deposition of Mr. Martin for two and a half hours," and that "the Court sua sponte issued an order absent any notice of motion, which severely limited Plaintiffs [sic] right to take Mr. Martin's deposition for the 7-hour time allotted in New York."

Plaintiffs' "sua sponte" argument, rooted on the purported "sua sponte" nature of the March 5, 2025 ruling, is unavailing. The March 4, 2025 Conference Order was not issued sua sponte but, rather, came on the heels of oral argument presented by both sides during the March 4 compliance conference. Defendants allege, and plaintiffs do not dispute, that plaintiffs specifically raised the issue of deposing Martin during the conference, a request opposed by defendants, arguing that Martin lacked relevant knowledge of the events at issue and that any deposition would prove to be

unduly burdensome. After hearing arguments emanating from both sides, the Court granted plaintiffs' request in part and, exercising its discretion, ordered that plaintiffs be permitted to depose Martin for up to 2.5 hours. The subject ruling was promptly memorialized in the written Conference Order dated the same day. Plaintiffs offer no new facts or intervening legal authority warranting reconsideration or vacatur of that determination.

Moreover, plaintiffs have failed to establish that Martin's deposition warrants more than the two and a half hour time frame previously permitted by the Court. Plaintiffs assert, in general terms, that "Mr. Martin is a crucial witness as he is the President of Boar's Head," and that "[h]is testimony concerning Boar's head work practices is essential to the prosecution of the Plaintiffs' case and the establishment of Mr. Lercara being a designated employee of Boar's Head." However, defendants refute this claim, asserting that "Plaintiffs cannot, and do not, offer any evidence to support this argument—despite documentary discovery and three depositions of members of top management—because Martin is not the President." Defendants note that discovery materials and testimony from other witnesses have identified individuals who served as President both currently and during plaintiffs' tenure, which ended more than eight years ago, and Martin was not among them. In reply, plaintiffs do no more than to echo their previous stance, conclusively asserting, without evidentiary support, that "upon information and belief, Mr. Martin is currently the President, or during the time period of this action was the President, of Boar's Head." Plaintiffs have submitted neither documentary, nor testimonial, evidence buttressing this allegation. Plaintiffs' conclusory assertion as to the status of Martin in the Boar's Head organizational chart does not warrant extending the deposition beyond the Court-ordered 2.5-hour time frame. Accordingly, the branch of plaintiffs' motion seeking vacatur of the Conference Order dated March 4, 2025, is denied.

The Martin Deposition and Cross-Motions for Protective Orders

Defendants and non-party Martin move for protective orders pursuant to CPLR 3103 (a), seeking to preclude the continued deposition of Martin. Pursuant to CPLR 3103 (a), the Court may “make a protective order denying, limiting, conditioning or regulating the use of any disclosure device” to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” Defendants and Martin argue that plaintiffs’ counsel, Mr. Genovesi, disrupted the Martin deposition through unprofessional conduct, including repeatedly interrupting Martin’s personal attorney and refusing to allow him to make a statement on the record concerning Martin’s health. Defendants further assert that Martin’s advanced age and health conditions, coupled with the tangential relevance of his testimony and the expense of preparing for a deposition that did not proceed, warrant protection from any further examination.

At oral argument and in his motion papers, Mr. Genovesi acknowledged that “there’s nothing wrong with that” in reference to Martin appearing with multiple attorneys at the deposition, stating only that he did not want to “deal with objections from three attorneys.” However, the transcript does not reflect any attempt by Martin’s counsel to lodge objections during the deposition. Rather, Martin’s attorneys were simply attempting to make a brief preliminary statement on the record concerning Martin’s health—an effort that was repeatedly interrupted by plaintiffs’ counsel and ultimately led to Martin’s personal attorney terminating the deposition.

Although the Martin deposition was cut short before any substantive testimony could be elicited, the record does not establish that the interruption was solely attributable to plaintiffs’ counsel. To the contrary, Martin’s attorney, Mr. Lauro, unilaterally ended the session, asserting that “[w]e’re not—sir, we’re not going to continue this. We’re off the record. We’re not going to attend this deposition. We’ll go to the judge. If you’re not going to let me put something on the

record—” and thereafter reiterated, “We’re off. Off the record” (*see* NYSCEF Doc No. 206, Martin EBT Tr, at 7:19–24, 8:3–4). Additionally, the parties failed to contact the Court amidst the dispute. Either party could have sought Court intervention in real time to resolve the issue, allowing the deposition to proceed.

While the transcript of the Martin deposition reflects a contentious exchange between counsel and a breakdown in professional communication, the record does not support the extraordinary remedy of barring a court-authorized deposition. Nor have defendants or Martin demonstrated that continuing the deposition—limited to the 2.5-hour duration already authorized and to be conducted remotely—would impose an undue burden, constitute harassment, or cause prejudice sufficient to warrant a protective order, particularly given that, as defense counsel acknowledge, multiple attorneys already devoted time fully preparing Martin for the deposition.

Accordingly, the cross-motions for protective orders interposed by defendants and Martin are denied. The Court’s March 4, 2025 Conference Order remains in effect, which Order authorizes plaintiffs to depose Martin for a total of 2.5 hours. The parties are directed to meet and confer in good faith to schedule and complete Martin’s deposition on or before September 12, 2025.

Conclusion

Based on the foregoing, plaintiffs’ motion to compel and to vacate, defendants’ cross-motion for a protective order, and non-party Martin’s cross-motion for a protective order are all denied.


It is further ORDERED that the parties shall meet and confer in good faith to schedule and complete Martin’s deposition on or before September 12, 2025.

It is further ORDERED that the in-person compliance conference currently scheduled for July 29, 2025 is hereby adjourned to September 23, 2025, at 2:30 p.m., to be held in Courtroom 956, Kings County Supreme Court, 360 Adams Street, Brooklyn, New York 11201.

It is further ORDERED that the Note of Issue, currently due on May 30, 2025, is hereby extended to October 31, 2025.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

**HON. REGINALD A. BODDIE
J.S.C.**