

Torbati v Bauer

2026 NY Slip Op 31996(U)

May 6, 2026

Supreme Court, New York County

Docket Number: Index No. 805382/2022

Judge: Kathy J. King

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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. KATHY J. KING PART **06**

Justice

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SHAHNAZ TORBATI,

Plaintiff,

- v -

OREST BAUER, BAUER DENTAL ARTS PLLC, PPS 77 LLC,
ROUTE 97 REALTY LLC, and S.T.A. PARKING CORP.,

Defendants.

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INDEX NO. 805382/2022

MOTION DATE 05/05/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 105, 106, 107, 108, 109, 110, 112, 113, 114

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, Plaintiff, Shahnaz Torbati, moves for an Order, pursuant to 22 NYCRR §202.20-c, compelling responses from Defendants PPS 77 LLC (“PPS”) and ROUTE 97 REALTY LLC (“Route 97”), to Plaintiff’s second notice for discovery and inspection dated August 4, 2025, and, to the extent that any of the requested documents and/or items do not exist, a Jackson affidavit to that effect.

BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff on March 18, 2021, when she tripped and fell on the sidewalk abutting the premises located between 433 and 435 East 76th Street, New York, NY (“the Premises”). Plaintiff alleges that Defendants PPS and Route 97 owned or operated the Premises and negligently failed to maintain the sidewalk in a reasonably safe condition.

Following the August 4, 2025, deposition of Eric Brown—the corporate witness for both Defendants—Plaintiff served a Second Notice for Discovery and Inspection. During his testimony,

Mr. Brown stated he was unsure which contractors performed sidewalk work during the relevant period but indicated that responsive documents likely existed within Defendants' records.

On October 17, 2025, PPS provided a response stating it was "not presently in possession" of the requested materials. To date, Route 97 has not provided a formal response.

Plaintiff now moves for an Order to compel Defendants PPS 77 LLC and Route 97 Realty LLC to provide full and complete responses to the August 4, 2025, Second Notice for Discovery and Inspection, or, for any requested items not in their possession, a Jackson affidavit detailing the specific efforts made to locate them.

Defendant Route 97 opposes Plaintiff's motion in part, and Defendant PPS has filed no opposition.

DISCUSSION

Pursuant to CPLR 3101(a), there shall be "full disclosure of all matter material and necessary in the prosecution or defense of an action." The words "material and necessary" are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial. Where a party's search for requested documents is unsuccessful, to satisfy their discovery obligations, defendants must provide a Jackson Affidavit—a sworn statement from a person with personal knowledge of the search. This affidavit must detail: the specific locations searched; the manner in which the search was conducted; and confirmation that the search was diligent and unsuccessful (*see Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992]).

Here, the Court finds that the notice of discovery served upon Defendants on August 4, 2025, seeks materials that would be directly "material and necessary" to this litigation, as the materials being sought, which pertains to items related to the work performed on the sidewalk

outside of 433 East 76th Street, New York, NY during the time period relevant to Plaintiff's claims, would allow Plaintiff to establish her claims.

Moreover, the responses provided by PPS—stating they are “not presently aware” of responsive documents—fail to comply with the specificity required by 22 NYCRR 202.20-c. Under this rule, a party must state with particularity whether the production is complete or whether documents are being withheld. Given Mr. Brown's testimony that such documents likely exist, Defendants' response of non-possession are insufficient, and a detailed *Jackson* affidavit is required for any items Defendants claim they cannot produce.

Where a party claims it does not possess requested discovery, it must provide a *Jackson* affidavit. This affidavit must be made by someone with personal knowledge of the search and must detail the specific locations searched, the method of the search, and the results (*Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992]).

In addition, Plaintiff requests “preclusion language” (a conditional order striking the answer). While the Court finds Defendants have been dilatory, the striking of a pleading is a drastic remedy reserved for conduct that is “willful and contumacious” (*Tribeca Space Mgrs., Inc. v Tribeca Mews Ltd.*, 138 AD3d 617 [1st Dept 2016]). Thus, at this time, the Court will grant the motion to compel but declines to issue a self-executing preclusion order and instead sets a firm deadline for compliance.

Accordingly, it is hereby

ORDERED that Plaintiff's motion is granted to the extent that:

1) Defendants PPS 77 LLC and ROUTE 97 REALTY LLC shall provide full and complete responses to Plaintiff's Second Notice for Discovery and Inspection dated August 4, 2025, within 45 days of the date of this Order with Notice of Entry;

2) Defendants shall provide a *Jackson* affidavit compliant with the requirements of *Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992] to the extent that responsive materials do not exist or are not in their possession, within 45 days of the date of this Order; and it is further

ORDERED that the motion is denied in its entirety in all other respects.

ORDERED that Plaintiff shall serve a copy of this Order with Notice of Entry upon all parties within seven (7) days.

This constitutes the Decision and Order of the Court.

5/6/2026
DATE

Kathy J. King
KATHY J. KING, 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 checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE