

Isufi v Prometal Constr., Inc.
2017 NY Slip Op 30642(U)
April 3, 2017
Supreme Court, New York County
Docket Number: 653265/2012
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

DURIM ISUFI and ENVER KLLOGJERI,
individually and on behalf of all other
persons similarly situated who were
employed by PROMETAL CONSTRUCTION, INC.,
along with other entities affiliated or
controlled by PROMETAL CONSTRUCTION, INC.,
with respect to certain Public Works
Projects awarded by the CITY OF NEW YORK,
THE NEW YORK CITY HOUSING AUTHORITY,
Plaintiffs,

Index No.: 653265/2012

Motion Date:

Motion Seq. No.: 003

- v -

PROMETAL CONSTRUCTION, INC., STV
CONSTRUCTION, INC., and RLI INSURANCE
COMPANY,
Defendants.

The following papers were read on this motion to quash and for a protective order.

Table with 2 columns: Document Name and Page Range. Includes rows for Notice of Motion/Order to Show Cause -Affidavits -Exhibits, Answering Affidavits - Exhibits, and Replying Affidavits - Exhibits.

Cross-Motion: [] Yes [x] No

Upon the foregoing papers,

The court shall grant plaintiffs' motion to quash
defendant's subpoenas issued to the New York State Department of
Labor, Unemployment Insurance Division, the New York State
Workers Compensation Board, the New York City Human Resources
Administration, and deny the motion as to records sought from

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: [] CASE DISPOSED [x] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [] GRANTED [] DENIED [x] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

third-party defendant Akropol General Contractors, Inc.

The subpoenas that plaintiffs seek to quash request information about plaintiff and putative class members including unemployment benefits, workers compensation benefits, health care benefits, and payroll and tax documents.

The Court of Appeals has stated

CPLR 3101 (a) (4) is one mechanism by which a party may obtain discovery from a nonparty (accord CPLR 3101 [a] [3]). It provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: . . . (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required" (emphasis supplied).

* * *

We conclude that the "material and necessary" standard adopted by the First and Fourth Departments is the appropriate one and is in keeping with this state's policy of liberal discovery. The words "material and necessary" as used in section 3101 must "be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406 [1968]). Section 3101 (a) (4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty.

Kapon v Koch, 23 NY3d 32 36-38 (2014).

Here, defendants fail to demonstrate that any of the information sought from the government agencies bears on the controversy as to plaintiffs' claims that they were not paid prevailing wages. The information sought has no relation to

plaintiffs' employment with defendants as the defendants have not established nor argued that the records have any relationship the manner or amount of compensation paid to plaintiffs. Contrast Velez v Hunts Point Multi-Serv. Ctr., Inc., 29 AD3d 104, 112 (1st Dept 2006) (compensation records sought related to alleged breach of fiduciary duty). That is, plaintiffs' alleged receipt of benefits from government agencies is not connected to their employment and therefore is not material to the issue of whether they were properly compensated for the work they allege to have performed for defendant.

However, the court shall deny plaintiffs' application as to the records sought from third-party defendant Akropol General Contractors, Inc., because it is alleged that the third-party defendant was the employer of certain members of the class and therefore the information sought is relevant to defendants' defenses as to the party responsible for the compensation.

Accordingly, it is

ORDERED that plaintiffs' motion for leave to quash defendant's subpoenas issued to the New York State Department of Labor, Unemployment Insurance Division, the New York State Workers Compensation Board, the New York City Human Resources Administration, and for a protective order that such records shall not be disclosed is GRANTED; and it is further

ORDERED that the motion is otherwise DENIED.

This is the decision and order of the court.

Dated: April 3, 2017

ENTER:

~~*Debra A. James*~~
DEBRA A. JAMES J.S.C.