

Ferrara v Hines 1045 of the Ams. Invs. LLC
2018 NY Slip Op 33367(U)
December 21, 2018
Supreme Court, New York County
Docket Number: 154379/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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STEVEN FERRARA and KAREN FERRARA,

Index No. 154379/2016

Plaintiffs

- against -

DECISION AND ORDER

HINES 1045 OF THE AMERICAS INVESTORS
LLC, TURNER CONSTRUCTION COMPANY, and
COMPONENT ASSEMBLY SYSTEMS, INC.,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiffs sue for personal injuries sustained by plaintiff Steven Ferrara April 2, 2015, when an extension ladder fell and struck him as he was installing metal siding on the exterior of a mechanical room on the roof of a building under construction at 7 Bryant Park in New York County. Plaintiffs withdraw their motion except insofar as it seeks to compel defendant general contractor Turner Construction Company to produce its employee Frank Sceri for a deposition. Plaintiffs seeks his deposition because the deposition testimony by the two employees defendants Turner Construction and subcontractor Component Assembly Systems, Inc., previously produced and the documents defendants have produced demonstrate that he possesses relevant knowledge. C.P.L.R. § 3124. Even if the previous two witnesses also possessed relevant knowledge, it is not the same relevant knowledge that Sceri possesses.

The parties are unaware of any witness other than Ferrara

himself who observed the ladder striking him. Plaintiffs have deposed the only identified witness who observed the ladder being used on the day Ferrara was injured. Turner Construction's previous witness, Project Superintendent Randy Brezinski, worked at the construction project daily and oversaw its daily activities when plaintiff was injured. He went to the roof of the building one to several times per week. He was familiar with Turner Construction's safety plan for the work site and specifically its procedures for handling high wind conditions, including notification of subcontractors when high wind conditions required precautions.

Component Assembly Systems' previous witness, Corporate Safety Director Robert Torrieri, was responsible for training its employees in the safe use of ladders at the project and visited the project weekly at the time plaintiff was injured. Given his responsibilities, he was familiar with the procedures for safe use of ladders, including their storage when work concluded each day and the topics covered by ladder safety training. Neither witness, however, knew who owned the ladder that struck Ferrara and therefore was responsible for its care and control, knew of its whereabouts after Ferrara's injury, or knew who took the photographs of the ladder that defendants produced.

Frank Sceri, on the other hand, prepared Turner Construction's report of Ferrara's injury. While Sceri did not observe the ladder striking Ferrara or being used immediately before the incident, Sceri's preparation of the incident report

likely entailed an investigation of who might possess such knowledge and knowledge of who owned, controlled, or took care of the ladder, including after Ferrara's injury. If anyone is familiar with the origin of the photographs of the ladder produced by defendants, likely Sceri is.

Plaintiffs thus have met their burden to show the previous witnesses' lack of knowledge about relevant information and the likelihood that Sceri may possess that knowledge or knowledge that may lead to information necessary to their prosecution of this action, even if that information supports defendants rather than plaintiffs. Best Payphones, Inc. v. Guzov Ofsink, LLC, 135 A.D.3d 585, 585 (1st Dep't 2016); Alexopoulos v. Metropolitan Transp. Auth., 37 A.D.3d 232, 233 (1st Dep't 2007); Brevetti v. City of New York, 79 A.D.3d 958, 958-59 (2d Dep't 2010); Filoramo v. City of New York, 61 A.D.3d 715, 715-16 (2d Dep't 2009). At minimum, plaintiffs are entitled to test the veracity of Sceri's report.

Defendants oppose the relief sought on the grounds that plaintiffs' motion did not detail communications between plaintiffs and defendants that evince diligent efforts by plaintiffs to resolve the issue of additional deposition witnesses after the last Status Conference November 8, 2018. Yet plaintiffs do recount their efforts up to and at that conference, where they communicated why Brezinski and Torrieri possessed insufficient information and why Sceri was likely to possess relevant information that the two previous witnesses did not

possess. When defendants at the conference refused to produce any additional witness, the negotiations reached a stalemate, leaving plaintiffs with no recourse other than a motion to resolve the issue. 22 N.Y.C.R.R. § 202.7(a)(2) and (c); Loeb v. Assara N.Y. I L.P., 118 A.D.3d 457, 458 (1st Dep't 2014); Northern Leasing Sys., Inc. v. Estate of Turner, 82 A.D.3d 490, 490 (1st Dep't 2011); Carrasquillo v. Netsloh Realty Corp., 279 A.D.2d 334, 334 (1st Dep't 2001).

Consequently, for the reasons explained above, the court grants plaintiffs' motion to compel defendant Turner Construction Company to produce its employee Frank Sceri for a deposition, upon plaintiffs' re-service of a notice of Sceri's deposition. C.P.L.R. §§ 3107, 3124. Plaintiffs withdraw the remainder of their motion to compel disclosure. Since they have provided the authorizations for release of medical records that defendants sought, defendants withdraw their cross-motion for penalties due to plaintiffs' failure to provide those authorizations.

DATED: December 21, 2018

Lucy Billings

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS
J.S.C.**