

Onekey, LLC v Donato Inc.

2018 NY Slip Op 32592(U)

October 10, 2018

Supreme Court, New York County

Docket Number: 653270/2016

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X INDEX NO. 653270/2016

ONEKEY, LLC,

MOTION DATE N/A, N/A

Plaintiff,

MOTION SEQ. NO. 006 007

- v -

DONATO INC., ANTHONY CAIAZZO, J. CAIAZZO PLUMBING &
HEATING CORP.

DECISION AND ORDER

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 006) 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 180, 183

were read on this motion to/for PROTECTIVE ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 007) 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 181, 182, 184, 185

were read on this motion to/for PROTECTIVE ORDER

Motion Sequence Numbers 006 and 007 are consolidated for disposition. The motion (MS006) by defendant Donato, Inc., (“Donato”) for a protective order striking plaintiff’s notice to admit is granted. The motion (MS007) by Anthony Caiazzo and J. Caiazzo Plumbing & Heating Corp. (“Caiazzo”) for a protective order striking plaintiff’s notice to admit is granted.

Background

This action arises out of a construction project located at 84-86 White Street, New York, New York. Plaintiff served as a general contractor and defendant Donato was hired to install a sprinkler system. Plaintiff claims that Donato’s negligence in performing its work caused water damage to the premises after a fire sprinkler head malfunctioned. After the damage, plaintiff expended its own resources cleaning up the mess.

Plaintiff claims that after it executed its subcontract with Donato, Donato allegedly failed to apply for and obtain the necessary permits for the installation of the appropriate fire suppression (sprinkler) equipment in the building. Donato now alleges that Caiazzo applied for the required permits and plaintiff was not informed of any of these occurrences. Plaintiff claims it had no idea Caiazzo was working on the project and theorizes that Caiazzo was brought on because it has the requisite license to do the sprinkler work while Donato did not.

Both defendants move for a protective order vacating plaintiff's notices to admit. Defendants claim that these notices to admit are improper because they seek admissions on the ultimate issues in the case, request defendants to admit or deny legal conclusions and demand admissions from each defendant concerning facts exclusively within the knowledge of the other defendant.

In opposition, plaintiff insists that its notices to admit are proper because they address undisputed or indisputable facts. Plaintiff contends that if defendants were to respond it would facilitate a prompt resolution of the case.

Discussion

"A notice to admit may not be utilized to request admission of material issues or ultimate or conclusory facts, and is only properly used to eliminate from trial matters which are easily provable and about which there can be no controversy" (*Samsung America, Inc., v Yugoslav-Korean Consulting & Trading Co., Inc.*, 199 AD2d 48, 49, 604 NYS2d 112 [1st Dept 1993]). A notice to admit may not be used to seek admissions "which go to the very heart of the matters at issue" (*Zohar v Hair Club for Men Ltd.*, 200 AD2d 453, 454, 607 NYS2d 5 [1st Dept 1994]).

Here, a review of both notices to admit reveal that they improperly seek admissions about material issues in this case. For instance, in the notice to admit sent to Caiazzo, plaintiff asks

Caiazzo to admit or deny whether “Donato did not inform Onekey of such agreement(s) by Defendants” (NYSCEF Doc. No. 171, ¶ 7). Clearly, it is improper for plaintiff to ask Caiazzo to admit or deny information about whether *Donato* informed plaintiff about an agreement with Caiazzo. The notice to admit also seeks admissions about the cause of the leak (*id.* ¶ 11), the damage caused by the leak (*id.* ¶¶ 17, 18) and about the status of Caiazzo’s and Donato’s licenses to perform sprinkler work (*see id.* ¶¶ 24-32, 38-40). These are the central issues of this action: who is responsible for the leak, the extent of the damages caused by the leak and whether defendants ignored applicable rules requiring contractors to have a license to do sprinkler work.

The notice to admit sent to Donato is no better. It contains many improper requests, including “Donato never requested nor received any such permission from Onekey, i.e., to enter into any such agreement(s) with Anthony Caiazzo and/or J. Caiazzo Plumbing & Heating Corp. (NYSCEF Doc. No. 156 ¶ 12). Plaintiff also asks, “One or more persons associated with Donato performed Sprinkler Work on the Project without being a licensed master fire suppression piping contractor, and without working under the direct and continuing supervision of a licensed master fire suppression piping contractor” (*id.* ¶ 15).

Plaintiff’s theory of the case is that “Caiazzo improperly let Donato use his license, and Donato improperly used it, and Caiazzo ‘self-certified’ aspects of Donato’s work” (NYSCEF Doc. No. 181 [plaintiff’s opposition to Caiazzo’s motion]). There is no question that majority of the requested admissions are flatly improper because they go to the heart of the matter. While the Court appreciates that plaintiff’s counsel offered to withdraw certain requests, this Court strikes both notices to admit in their entirety. These questions are for a deposition or interrogatories and the Court will not micromanage discovery.

Accordingly, it is hereby

ORDERED that the motion by defendant Donato, Inc. for a protective order striking plaintiff's notice to admit is granted; and it is further

ORDERED that the motion (MS007) by defendants Anthony Caiazzo and J. Caiazzo Plumbing & Heating Corp. for a protective order striking plaintiff's notice to admit is granted.

Next conference: 12-4-18 @ 2:15 p.m.

10-10-18

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED:

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION:

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

ARLENE P. BLUTH