Flatiron-Williamsburg Prop. Group II LLC v Arpad Baksa Architect, P.C.
2018 NY Slip Op 32775(U)
October 19, 2018
Supreme Court, New York County
Docket Number: 159693/2014
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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FLATIRON-WILLIAMSBURG PROPERTY GROUP II LLC, 21 JUDGE STREET LLC, and FLATIRON-WILLIAMSBURG PROPERTY GROUP I LLC,

Index No. 159693/2014

Plaintiffs

- against -

ARPAD BAKSA ARCHITECT, P.C., and ARPAD BAKSA,

Defendants

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ARPAD BAKSA ARCHITECT, P.C.,

Third Party Plaintiff

- against -

ARCHITECTURE WORK, P.C., METROPAN SYSTEMS, INC., VENDELAY ROOFING, AWAN CONTRACTING LLC, PLUMBING COMPANY, INC., A-PLUS MASONRY, INC., and LAVADA, INC.,

Third Party Defendants

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ARPAD BAKSA ARCHITECT, P.C.,

Second Third Party Plaintiff

- against -

VANDELAY BUILDING SERVICES INC.,

Second Third Party Defendant

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ARPAD BAKSA ARCHITECT, P.C.,

Third Third Party Plaintiff

- against -

COW BAY CONTRACTING INC.,

Third Third Party Defendant

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DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiffs move for a protective order (1) prohibiting defendants from further deposing two of plaintiff's witnesses whose depositions are still incomplete after lengthy questioning or, at minimum, limiting the remaining time of their depositions and (2) limiting the time of defendants' depositions of any further witnesses produced by plaintiffs. C.P.L.R. § 3103(a). Plaintiffs demonstrate that defendants have prolonged plaintiffs' depositions by asking repetitive, otherwise unnecessary, and irrelevant questions. See Kingsgate Assocs. v. Advest, Inc., 208 A.D.2d 356, 357 (1st Dep't 1994); Greenman-Pedersen, Inc. v. Zurich Am. Ins. Co., 54 A.D.3d 386, 387 (2d Dep't 2008); Pucik v. Cornell Univ., 4 A.D.3d 686, 687 (3d Dep't 2004). The deposition of plaintiffs' witness Derek Konefal already has lasted three full days, and the deposition of their witness Steven Ancona almost two full days.

I. DEFENDANTS' DEPOSITIONS OF PLAINTIFFS' WITNESSES

For example, where documents produced by plaintiffs show that the deposition witness wrote or received the document, usually an email, plaintiffs stipulate that the witness wrote or received the document. Therefore it is unnecessary to question the witness on those rudimentary points, as has been defendants' constant routine. See Saieh v. Demetro, 201 A.D.2d 477, 477 (2d Dep't 1994). Nor is it necessary to ask the witness what the document states, as has been defendants' constant routine. The document will be admissible or not. Plaintiffs have authenticated it. If defendants will offer the document, they may seek to lay a foundation for the document's admissibility. If the document's contents are ambiguous, and the witness is the author, they may ask him to interpret the ambiguity. If the document indicates there were attachments or documents related to it that were not produced, defendants may request the unproduced documents. Nothing more is needed. See Jones v. Maples, 257 A.D.2d 53, 56-57 (1st Dep't 1999).

Once the witness has shown his lack of knowledge about a subject, defendants' persistent further questioning about that subject serves no purpose. See Broadband Communications v. Home Box Off., 157 A.D.2d 479, 490 (1st Dep't 1990); Saieh v. Demetro, 201 A.D.2d at 477. In this action for breach of contract, negligence, and architectural malpractice in defendants' design of plaintiffs' building that caused water damage to the building, plaintiffs' property manager Konefal established his limited

knowledge about the building's construction. He knew nothing about the bidding for the construction, the selection of the general contractor and subcontractors, the contracts, or who performed what work. Yet defendants used up the entire first day of his deposition questioning him uselessly about the construction. The only potentially useful questions asked who else might know about a subject.

Konefal did assist Ancona in compiling a list of outstanding work at the construction's completion, but defendants did not focus their inquiry on this area of involvement. Their defense claimed that plaintiffs' attempts to cut costs and cut corners in their construction caused their damages, but, instead of focussing on that issue, defendants have sought to explore issues in every area of the construction, whether or not relevant to the water damage or cutting costs or corners. Defendants provide no explanation how their concerns about the building's fire alarms, locks, or graffiti, for example, or tenants' occupancy without a Certificate of Occupancy are relevant or reasonably calculated to yield evidence necessary or reasonably helpful or useful to defendants' defense. C.P.L.R. § 3101(a); Forman v. Henkin, 30 N.Y.3d 656, 661, 664 (2018); SNI/SI Networks LLC v. DIRECTV, LLC, 132 A.D.3d 616, 617 (1st Dep't 2015); Matter of Steam Pipe Explosion at 41st St. & Lexington Ave., 127 A.D.3d 554, 555 (1st Dep't 2015).

II. STANDARDS FOR A PROTECTIVE ORDER

If defendants choose to waste their opportunities to depose plaintiffs' witnesses on pointless inquiries not focussed on actual issues in the action, defendants may do so, but not at the undue expense of all other parties. Defendants are entitled to depose adverse parties, but the court may limit defendants' quest for information when the inquiries seek irrelevant information, are patently excessive, or unreasonably burden or annoy other parties, even if unintentionally. C.P.L.R. § 3103(a); Jones v. Maples, 257 A.D.2d at 56; Kingsgate Assocs. v. Advest, Inc., 208 A.D.2d at 357; Greenman-Pedersen, Inc. v. Zurich Am. Ins. Co., 54 A.D.3d at 387; Pucik v. Cornell Univ., 4 A.D.3d at 687. Defendants are not entitled to unlimited disclosure. Suchorzepka v. Mukhtarzad, 103 A.D.3d 878, 879 (2d Dep't 2013). Where depositions are the avenue of inquiry, the most practical means to keep the inquiry within reasonable bounds is to limit the depositions' duration. Hutton v. Aesthetic Surgery, P.C., 161 A.D.3d 595, 596 (1st Dep't 2018); Nathel v. Nathel, 55 A.D.3d 434, 434 (1st Dep't 2008); Matter of Dier, 13 A.D.3d 150, 151 (1st Dep't 2004); Bielat v. Montrose, 249 A.D.2d 103, 103 (1st Dep't 1998). See Jones v. Maples, 257 A.D.2d at 56. After all, as defendants themselves emphasize, the purpose of disclosure is to accelerate, not prolong, disposition. Defendants may use the time allocated to them wisely or unwisely, without the court ruling on the permissibility of their questions.

In a stipulated Status Conference Order dated May 23, 2018,

plaintiffs already stipulated to produce Konefal for a fourth day of his deposition. The court will not now infringe on that stipulation and order, nor otherwise prohibit depositions of plaintiffs. Nevertheless, defendants have established a track record of wasting their multiple opportunities to depose plaintiffs. The court is giving defendants a further opportunity to use their time efficiently and giving them advance notice of their time limits. See Farrakhan v. NYP Holdings, Inc., 226 A.D.2d 133, 136 (1st Dep't 1996).

III. RELIEF

Since defendants have not offered any reasonable estimate of how long they need to question plaintiffs' witnesses on relevant issues about which defendants have not yet been afforded the opportunity to inquire, Hutton v. Aesthetic Surgery, P.C., 161 A.D.3d at 596; Smukler v. 12 Lofts Realty, 178 A.D.2d 125, 126 (1st Dep't 1991), the court sets the following limits. Nathel v. Nathel, 55 A.D.3d at 434; Matter of Dier, 13 A.D.3d at 151; Bielat v. Montrose, 249 A.D.2d at 103; Kingsgate Assocs. v. Advest, Inc., 208 A.D.2d at 357. See Caro v. Marsh USA, Inc., 101 A.D.3d 1068, 1069 (2d Dep't 2012); Pucik v. Cornell Univ., 4 A.D.3d at 687. Defendants are entitled to their fourth day of Konefal's deposition, when they may question Konefal further for up to six hours, inclusive of his answers, but exclusive of colloquy. Defendants likewise shall be limited to six hours for their questions to Ancona and his answers, exclusive of colloquy. Defendants are entitled to depose one witness for each of the

three plaintiffs, but shall be limited to 12 hours for their questions to plaintiffs' third witness and the witness' answers, exclusive of colloquy.

The court denies plaintiffs' additional requests for relief. Their only basis for an award of attorneys' fees and expenses is 22 N.Y.C.R.R. §§ 130-1.1 and 130-1.2. As set forth above, defendants have wasted the parties' time and resources on unnecessary, irrelevant, and unfocussed questions and used the time already afforded to defendants unwisely, establishing the basis for the protective order. C.P.L.R. § 3103(a). Plaintiffs have not shown, however, that defendants' or their attorneys' conduct was motivated by an intent to harass or annoy the witnesses or other parties, rather than a misguided assumption that defendants were entitled to question witnesses endlessly, however defendants saw fit, without careful, disciplined preparation. See 22 N.Y.C.R.R. § 130-1.1; Komolov v. Segal, 96 A.D.3d 513, 514 (1st Dep't 2012); Eggert v. GCD Rec. Studios, 90 A.D.3d 425, 425 (1st Dep't 2011); Haynes v. Haynes, 72 A.D.3d 535, 536 (1st Dep't 2010); Parkchester S. Condominium Inc. v. Hernandez, 71 A.D.3d 503, 504 (1st Dep't 2010). Time limits will require defendants to use their time wisely, with adequate focus, or lose their opportunity for inquiry via depositions.

DATED: October 19, 2018

LUCY BILLINGS, J.S.C.

LUCY BILLINGS J.S.C.

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