

**Einbinder v Restoration Hardware, Inc.**

2019 NY Slip Op 33272(U)

October 28, 2019

Supreme Court, New York County

Docket Number: 155819/2016

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

SUSAN J. EINBINDER and JEFFREY S. EINBINDER,

Index No. 155819/2016

Plaintiffs

- against -

RESTORATION HARDWARE, INC., TANGER PROPERTIES LIMITED PARTNERSHIP, TANGER FACTORY OUTLET CENTERS, INC., and HOGAN RIVERHEAD, LLC,

Defendants

TANGER PROPERTIES LIMITED PARTNERSHIP, TANGER FACTORY OUTLET CENTERS, INC., and HOGAN RIVERHEAD, LLC,

Third Party Plaintiffs

- against -

TITAN GLOBAL, LLC, and LOYAL BUSINESS SERVICES, INC.,

Third Party Defendants

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiffs move to compel defendants Tanger Properties Limited Partnership and Tanger Factory Outlet Centers, Inc., to produce Tanger Properties' employee Mary Lou Ambrose, and third party defendant Titan Global, LLC, to produce its employee Edward Ramos, for depositions. C.P.L.R. § 3124. Only the Tanger defendants oppose the deposition of Ambrose.

I. TESTIMONY FROM THE PREVIOUS WITNESS AND POTENTIAL TESTIMONY FROM AMBROSE

Plaintiffs seek Ambrose's deposition because the Tanger defendants have produced only one witness for a deposition, who lacked personal knowledge regarding the circumstances of plaintiff Susan Einbinder's injury from a loose rock on the sidewalk in front of premises leased by defendant Restoration Hardware, Inc., from Tanger Properties at the Tanger defendants' shopping center. The shopping center is in Riverhead, New York, but the Tanger defendants' witness, Tanger Properties' Vice President of Operations Bruce Fry, worked in Pennsylvania, visited the shopping center only a few times per year, and was unfamiliar with the injury site. He possessed minimal knowledge of the shopping center's daily operations and relied on Tanger Properties' management team at the shopping center for that information.

Ambrose is a member of that management team who is likely to possess relevant knowledge not only of the injury site, but also of the circumstances surrounding Einbinder's injury, because Ambrose works at the shopping, across a parking lot from the sidewalk in front of Restoration Hardware, and took photographs of the site following the injury. She is likely to have been in a position to observe whether there were any loose rocks or conditions that may have caused a loose rock in front of Restoration Hardware and to know whether in that event her team took any action to correct such a condition or why not. Her photographs suggest that she may have investigated or contributed

to an investigation of how Einbinder's injury occurred.

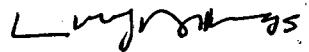
## II. CONCLUSION

Plaintiffs thus have met their burden to show the inadequacies in the Tanger defendants' previous witness' knowledge about relevant issues and to compel the Tanger defendants to produce a second witness, Mary Lou Ambrose, who is more likely to know more about the relevant issues about which the previous witness knew little. 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); Gomez v. State of New York, 106 A.D.3d 870, 872-73 (2d Dep't 2013); Trueforge Global Mach. Group v. Viraj Group, 84 A.D.3d 938, 939-40 (2d Dep't 2011). Therefore the court grants plaintiffs' motion to compel Tanger Properties Limited Partnership and Tanger Factory Outlet Centers, Inc., to produce Mary Lou Ambrose for a deposition. C.P.L.R. §§ 3107, 3124.

Plaintiffs shall re-serve notices of Mary Lou Ambrose's and Edward Ramos's depositions consistent with C.P.L.R. § 3107 so as to complete them by December 20, 2019. Ambrose's deposition shall be conducted in New York County unless otherwise stipulated by plaintiffs and the Tanger defendants, the only parties that responded to plaintiffs' motion to compel her deposition. C.P.L.R. § 3110(1). If plaintiffs fail to conduct either deposition by December 20, 2019, they shall have waived the

deposition. Plaintiffs shall serve and file a note of issue by  
January 3, 2020.

DATED: October 28, 2019



---

LUCY BILLINGS, J.S.C.

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