

Blackstock v AVR Crossroads, LLC
2020 NY Slip Op 34263(U)
December 24, 2020
Supreme Court, New York County
Docket Number: 155167/2012
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12

Justice

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INDEX NO. 155167/2012

ALBERT BLACKSTOCK, DEZETA BLACKSTOCK,
EDNA BLACKSTOCK,

MOTION DATE _____

Plaintiffs,

MOTION SEQ. NO. 007

- v -

AVR CROSSROADS, LLC, BOSTON PROPERTIES
LIMITED PARTNERSHIP, SCHINDLER
ELEVATOR CORPORATION, NEW YORK CITY
TRANSIT AUTHORITY, THE CITY OF NEW
YORK, VAN DEUSEN & ASSOCIATES (3RD PTY.),

**DECISION + ORDER ON
MOTION**

Defendants.

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AVR CROSSROADS, LLC, BOSTON PROPERTIES
LIMITED PARTNERSHIP,

Third-Party
Index No. 590653/2013

Third-party Plaintiffs,

-against-

VAN DEUSEN & ASSOCIATES,

Third-party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 211-215, 217-238
were read on this motion for discovery.

By notice of motion, plaintiffs move for an order: (1) directing defendant Schindler Elevator Corporation to produce certain employees for examinations before trial (EBTs); (2) compelling a missing witness charge to be given at trial relating to Schindler’s former employee, escalator mechanic Valerie Khasin; and (3) directing Schindler to produce all “go” paperwork related to settings/low capacity relating to the subject escalator with ID No. E-20312.

Schindler opposes.

In this action, plaintiffs allege that on May 19, 2011, they were injured on a moving escalator at premises owned and managed by defendants AVR Crossroads, LLC and Boston Properties Limited Partnership. Schindler was the elevator/escalator maintenance contractor for the premises and defendant Van Deusen & Associates was the building owner's elevator/escalator consultant who oversaw the CAT 1 testing³ of the escalator hours before plaintiffs' accident. (NYSCEF 217).

I. ADDITIONAL EMPLOYEE EBTS

A. Contentions

Plaintiffs argue that additional EBTS are warranted, as records produced during discovery reflect that on the date of the accident, Schindler employee Anthony Salsone had performed maintenance on the escalators, including visually inspecting equipment, and Khasin and another employee were also present that day. Plaintiffs thus seek the EBTS of Salsone and Khasin, at a minimum, and contend that despite their efforts to have Schindler produce them, Schindler unilaterally and improperly sought to limit their questioning. (NYSCEF 212).

According to Schindler, it produced for its designated witness, the building's escalator foreperson, who testified over two days about Schindler's general procedures related to the building's escalators as well as the subject escalator's service history. Schindler asserts that its records reflect that two employees performed testing on the subject escalator on the accident date, including Khasin, and that no other employee worked on the escalator that day. Schindler represents that it provided plaintiffs with the last known addresses of Khasin, as he had left its employ in June 2013, and another former employee who may have been notified of plaintiffs' accident, and also offered to produce Salsone, subject to the limitation that plaintiffs' questioning

of him be related to the facts of the accident and Schindler's alleged concealment of its post-accident repair of the escalator. Plaintiffs rejected the limitation. (NYSCEF 217).

B. Analysis

As Khasin performed some work on the escalator before and after plaintiff's accident, he is a potentially a fact witness and plaintiffs are entitled to depose him. However, as he is no longer employed by Schindler, plaintiffs must obtain his testimony by subpoena.

Schindler's request to limit Salsone's testimony is warranted, as Schindler already produced its designated witness with both general and specific knowledge about the escalator and Schindler's service procedures, and Salsone is being produced as a fact witness with relevant personal knowledge about the escalator at issue. Plaintiffs' counsel must thus limit his or her questioning of Salsone to the facts related to plaintiffs' accident and avoid duplicating questions put to Schindler's deposed witness.

Plaintiffs otherwise do not show that other Schindler employees have or may have relevant personal knowledge of their accident or the escalator at issue, and thus do not demonstrate that a deposition of any other employee is needed or warranted.

II. MISSING WITNESS CHARGE

Absent any dispute that Khasin left Schindler's employ in June 2013 and that Schindler identified him in various discovery responses beginning in 2014, plaintiffs had information about his identity and alleged knowledge of the escalator years ago. Moreover, Schindler provided plaintiff with his last known address in 2019. Under these circumstances, plaintiffs submit no evidence that Schindler failed to identify Khasin or produce him for deposition, as he was no longer under their control as of 2013. They thus fail to establish that a missing charge relating to Khasin is warranted. As plaintiffs have his last known address, nothing prohibits them from

subpoenaing and deposing him now. Indeed, Schindler has proposed sharing the cost with plaintiffs in seeking and obtaining his deposition. (NYSCEF 217).

III. "GO" PAPERWORK

As Schindler does not address or oppose plaintiffs' request for the "go" documents, which appear relevant here, they are entitled to it.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiffs' motion is granted to the following extent:

(1) Defendant Schindler Elevator Corporation is directed to produce Anthony Salsone for an EBT within 60 days of the date of this order; and

(2) Schindler is directed to produce all "go" paperwork related to settings/low capacity relating to the subject escalator with ID No. E-20312 within 45 days of the date of this order; it is further

ORDERED, that the remainder of plaintiffs' motion is denied; and it is further

ORDERED, that the parties are directed to either enter into a stipulation encompassing their next compliance conference on or before March 10, 2021, or appear for the conference in room 341, 60 Centre Street, New York, New York, on March 10, 2021 at 2:15 pm or virtually if necessary. The NOI is due by March 17, 2021.

Handwritten signature of Barbara Jaffe, J.S.C. with a digital ID number: 20201224085824B/AFFE29CBC43AF1C14C59BA7996EDE03929F

12/24/2020 DATE

Form with checkboxes for case disposition: CHECK ONE: CASE DISPOSED (GRANTED, DENIED), APPLICATION: SETTLE ORDER, CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN, NON-FINAL DISPOSITION (checked), GRANTED IN PART, SUBMIT ORDER, FIDUCIARY APPOINTMENT, OTHER (checked), REFERENCE.