

**Cafisi v L&L Holding Co., LLC**

2023 NY Slip Op 33274(U)

September 22, 2023

Supreme Court, New York County

Docket Number: Index No. 157075/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

SALVATORE CAFISI,

Plaintiff,

- v -

L&L HOLDING COMPANY, LLC, COMREF 380, LLC, J.T.  
MAGEN & COMPANY INC., SHISEIDO AMERICA  
INC., MANHATTAN MECHANICAL CONTRACTORS, INC., D  
& G SHEETMETAL, INC., PAR FIRE PROTECTION, LLC,

Defendant.

-----X

J.T. MAGEN & COMPANY INC.

Plaintiff,

-against-

NATIONAL ACOUSTICS, LLC

Defendant.

-----X

MANHATTAN MECHANICAL CONTRACTORS, INC.

Plaintiff,

-against-

PAR FIRE PROTECTION, LLC, D & G SHEETMETAL, INC.

Defendant.

-----X

INDEX NO. 157075/2018  
MOTION DATE 09/21/2023  
MOTION SEQ. NO. 005

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595221/2019

Second Third-Party  
Index No. 595436/2021

The following e-filed documents, listed by NYSCEF document number (Motion 005) 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 330, 332, 333, 334, 335, 336, 337, 338

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Third-party defendant National Acoustics, LLC (“National”)’s motion to strike the note of issue and to compel discovery is granted in part and denied in part.

## Background

In this Labor Law case, the Court previously granted plaintiff partial summary judgment on his Labor Law § 240(1) claim. However, discovery has continued to proceed as additional parties have been added in third-party actions.

National argues that plaintiff filed a note of issue without the Court's permission, which contravenes this part's rules. It also identifies outstanding discovery it wants from second third-party defendant D&G Sheetmetal, Inc. ("D&G") relating to a May 2023 post-deposition demand including a witness statement, last known addresses for 15 D&G workers, certain documents given to D&G workers, as well as complaints made by, or received by, D&G. National's position is that D&G might be responsible for the accident as plaintiff *may* have slipped on metal straps like the ones used by D&G.

Plaintiff acknowledges in his opposition that he missed this part's rule about receiving explicit permission before filing the note of issue, but argues that any outstanding discovery is only between the defendants.

D&G opposes the portions of National's motion that seek to compel D&G to produce certain documents. It insists that the statement National wants is actually a witness statement from Tyrone Corgier (a D&G employee) and that, therefore, National is not entitled to this document. D&G maintains that even if this statement were discoverable, it is not in its possession and that the parties already had a chance to depose Mr. Corgier.

D&G maintains that National is not entitled to various phone numbers or contact information for former D&G employees because D&G already provided this information in its discovery response (which was submitted on September 14, 2023, after this motion was filed). D&G claims that the requests for documents are overbroad, vague, and ambiguous.

In reply, National demands that a *Jackson* affidavit be produced for the documents for which D&G claims it does not have. It insists that it is entitled to a reasonable amount of time to interview and subpoena D&G witnesses as D&G provided 3 addresses out of the 15 requested in September 2023 although these were requested in May 2023.

### **Discussion**

The Court strikes the note of issue as National established that there is clearly outstanding discovery and plaintiff contravened a clear part rule that forbids the filing of a note of issue without receiving the Court's permission. The purpose of this rule is evident in the instant motion practice—to prevent unnecessary motions to strike the note of issue while discovery remains outstanding.

With respect to the discovery requested by National, the Court rejects D&G's argument that National is not entitled to the witness statement from Mr. Corgier—of course, a party is entitled to review a statement from another party's employee pertaining to the Labor Law accident at issue here. D&G cited no precedent for its assertion that National is not entitled to this document. D&G asserts it does not have this document—therefore, it must either find and produce this document or a *Jackson* affidavit by October 18, 2023.

Similarly, D&G must produce a *Jackson* affidavit for the remaining former employees for which it claims it does not have contact information by October 18, 2023. However, this does not apply to the two names (Mac Bob and Jason M.) for which National did not provide full names. National might be able to discover these potential witnesses' identities in connection with other depositions of former D&G employees, but the Court agrees with D&G that it need not attempt to discern who these individuals are with such limited information.

And, finally, the Court observes that D&G need not submit a *Jackson* affidavit with respect to the remaining requests—the document demands numbered 3-5 in the post-deposition demand (NYSCEF Doc. No. 336) as National did not explain why these demands are relevant or address D&G’s objections in National’s reply. In other words, D&G raised legitimate reasons why these requests were improper and National’s reply did not specifically address these document demands in reply.

Accordingly, it is hereby

ORDERED that National Acoustics, LLC’s motion to vacate the note of issue and to compel is granted as described above and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk’s Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)]; and it is further

ORDERED that D&G Sheetmetal, Inc. must either produce the requested information pertaining to the witness statement and the last known contact information for its former employees (except for the two individuals discussed above) *or* produce a *Jackson* affidavit detailing its unsuccessful efforts to locate this information by October 18, 2023.

See NYSCEF Doc. No. 331 about the next conference.

9/22/2023

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE