

2020 WL 1275533 (N.Y.Sup.), 2020 N.Y. Slip Op. 30782(U) (Trial Order)
Supreme Court of New York.
New York County

****1** HAYDEN ASSET VIII, LLC, Plaintiff,
v.
PUBLIC SERVICE MUTUAL INSURANCE COMPANY, Public Service Insurance Company,
Defendant.

No. 161751/2014.
March 11, 2020.

***1** PART 43
MOTION DATE N/A
MOTION SEQ. NO. 011

Decision * Order on Motion

[Robert R. Reed](#), J.S.C.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 230, 231, 232, 233 were read on this motion for DISCOVERY.

Upon the foregoing documents, it is ordered that this motion is granted.

Defendants move, pursuant to [CPLR 3124](#) and/or [3126](#), for an order to compel plaintiff to provide further supplemental responses to defendants' January 24, 2018 demand for discovery and inspection, or, in the alternative, to preclude plaintiff from claiming damages beyond the cost of repair to the property at issue. In opposition, plaintiff argues that supplemental responses were provided to defendants and that all responses were responsive to defendants' demands.

[CPLR 3101](#) requires full disclosure of all matter material and necessary in the prosecution or defense of an action. The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403). [CPLR 3124](#) provides, in part, that if a party fails to respond or comply with any demand or court order, the party seeking disclosure may move to compel compliance or a response. If a party ****2** continuously fails to respond to discovery demands and/or disclose required information, [CPLR 3126](#) provides that the court may issue an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses. To invoke the drastic remedy of striking a pleading, or even preclusion under [CPLR 3126](#), there must be a clear showing that the failure to comply with court-ordered discovery was willful, deliberate and contumacious (*see Moog v. City of New York*, 30 AD3d 490).

The discovery defendants seek involves information and documents regarding the specific amount of plaintiff's alleged damages, the amount spent on repairs before the subject property was sold, the date the property first listed for sale, whether the sale price was negatively impacted by the alleged loss and, if so, the dollar amount of the impact, whether plaintiff hired anyone to quantify the impact of the alleged loss on the sale price, the persons that calculated its damages and the documents that support plaintiff's alleged damages.

After review of the record and all submitted papers, it appears that plaintiff has failed to provide sufficient supplemental responses to defendants' discovery demands dated January 24, 2018. Plaintiff's argument that its supplemental responses are adequate is unpersuasive. The document demands and interrogatories to which defendants seek responses and responsive

documents are sufficiently specific, material to the issues at hand, and likely to lead to relevant and material documentation or information

*2 Accordingly, it is

ORDERED that defendants' motion to compel plaintiff to provide further supplemental responses to defendants' discovery demands dated January 24, 2018 is granted, and, within 21 **3 days of the date of entry of this order plaintiff shall review its files with respect to interrogatory number 10, and either provide a full response thereto, or, if no document or information can be found relating to this interrogatory, plaintiff shall within such time period prepare a detailed Jackson Affidavit describing the means and methods used to perform an appropriate search; and it is further

ORDERED that the portion of defendants' motion seeking to compel plaintiff to provide supplemental responses to interrogatories numbers 3, 11, 12, 13, 16, and 19 is granted, and, within 21 days of the date of entry of this order, plaintiff shall provide full responses to said interrogatories; and it is further

ORDERED that the portion of defendants' motion seeking to compel plaintiff to provide supplemental responses to its document demands is granted, and, within 21 days of the date of entry of this order, plaintiff shall provide documents responsive to document demand number 3 and document demand numbers 5 - 8.

This constitutes the Decision and Order of the court.

3/11/2020

DATE

<<signature>>

ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES
TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

End of Document

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