

**Zhinin v RP1185 LLC**

2024 NY Slip Op 34451(U)

December 17, 2024

Supreme Court, New York County

Docket Number: Index No. 155134/2020

Judge: Denise M. Dominguez

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  
NEW YORK COUNTY**

**PRESENT: HON. DENISE M DOMINGUEZ PART 35M**

*Justice*

-----X

INDEX NO. 155134/2020

LUIS ZHININ,

MOTION SEQ. NO. 003

Plaintiff,

- v -

**DECISION + ORDER ON  
MOTION**

RP1185 LLC,LENDLEASE (US) CONSTRUCTION LMB  
INC.,DOKA USA, LTD.,

Defendants.

-----X

DOKA USA, LTD.

Third-Party  
Index No. 596039/2020

Third-Party Plaintiff,

-against-

ROGER & SONS CONCRETE, INC.

Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 98, 99, 100, 101, 102, 103, 104

were read on this motion to/for PRECLUDE.

Upon the foregoing documents, Defendant/Third-Party Plaintiff DOKA USA, LTD.’s (“DOKA”) motion, pursuant to CPLR § 3126, to preclude Plaintiff from referring to, or introducing any evidence or testimony, concerning an inspection of the “Doka XClimb 60 System, its component parts, or any exemplar systems”, is conditionally granted.

This action arises out of an incident that occurred on June 10, 2020 at a construction site located at 1185 Broadway, in Manhattan. It is alleged that Plaintiff sustained various personal injuries while working with a “Doka Ratchet” at the premises. (NYSCEF Doc. 1).

DOKA moves to preclude Plaintiff from introducing evidence regarding the “Doka XClimb 60 System, its component parts, or any exemplar systems” due to the Plaintiff’s failure and/or refusal to timely request and conduct an inspection of the system. No opposition to the motion has been submitted by Plaintiff.

Upon review of the within motion and the record, per Plaintiff’s October 7, 2020 subpoena, the parties were on notice early on in this matter of the Plaintiff’s interest in inspecting the “subject Doka Ratchet” that was used by Plaintiff on the day of this incident. (NYSCEF Doc. 19).

Following Third-Party Defendant Roger & Sons Concrete, Inc.’s (“R&S”) appearance in this matter, the parties were Ordered to conduct an inspection of the “subject ratchet” on or before May 28, 2021. (NYSCEF Doc. 23, 39). However, such an inspection was not timely conducted, and the Court issued another Order directing the inspection of the “subject wrench” to be held by July 30, 2021 (NYSCEF Doc. 43). The inspection still was not conducted.

The inspection was not accounted for in the parties’ July 27, 2022 Compliance Conference Order (NYSCEF Doc. 85) nor the February 6, 2023 So Ordered Stipulation (NYSCEF Doc. 87).

Per the May 4, 2023 Order, nearly two years after it was first Ordered, the parties were directed to conduct the inspection of the “subject instrumentality” by June 30, 2023 (NYSCEF Doc. 90). After the Court granted Plaintiff’s adjournment request (NYSCEF Doc. 92), a conference was held with the Court, at which Plaintiff, apparently for the first time, demanded to inspect the entire system, not just the subject wrench/ratchet. Plaintiff then served a demand, dated July 17, 2023 for such inspection. (NYSCEF Doc. 94).

As the system was not available at the subject construction site, DOKA identified other sites where exemplar systems were being used in the New York City area in an effort to coordinate the inspection. (NYSCEF Doc. 101).

Upon review, despite the untimely nature of Plaintiff's demand to inspect the entire Doka Xclimb 60 system, and the difficulties in locating where and how such an inspection could be conducted, DOKA was willing to work with Plaintiff and the other parties in order for the inspection to be completed. For reasons that are not borne out in this motion, Plaintiff has repeatedly not taken advantage of such offers to coordinate the inspection and the multiple opportunities the Court has given Plaintiff to conduct the inspection.

Therefore, DOKA is directed to disclose the current locations in Manhattan of any exemplar Doka Xclimb 60 form systems that may be used for an inspection by January 10, 2025. The inspection shall be conducted by Plaintiff no later than February 14, 2025. If Plaintiff does not conduct such inspection by February 14, 2025, Plaintiff will be precluded from referring to, or introducing any evidence or testimony, concerning any inspection of the "Doka XClimb 60 System, its component parts, or any exemplar systems", at trial or in connection with any dispositive motion practice.

With respect to completing discovery in this matter, the parties are directed to submit a proposed status conference order on consent no later than 5 p.m. on January 10, 2025. All party depositions, if not already completed, are to be conducted by February 28, 2025 and the note of issue is to be filed by March 14, 2025. No further extensions of the note of issue shall be permitted.

Accordingly, it is hereby

ORDERED that Defendant/Third-Party Plaintiff DOKA USA, LTD.'s motion to preclude Plaintiff from referring to or introducing any evidence or testimony in connection with any inspection of the Doka XClimb 60 System, its component parts, or any exemplar is conditionally granted, to the extent that Plaintiff will be precluded from introducing evidence of an inspection

at the time of trial or in connection with any dispositive motion practice if the Plaintiff does not conduct the inspection of the system by February 14, 2025; and it is further

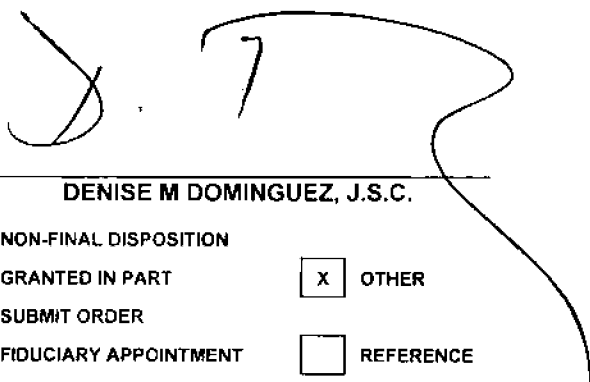
ORDERED that, in accordance with 22 NYCRR §202.12 and Part 35 Rules, the parties are to submit a proposed status conference order on consent no later than by 5 p.m. on January 10, 2025. Proposed orders must be submitted as an attachment to an email and sent to sfc-part35-clerk@nycourts.gov. If all discovery is complete, in lieu of a status conference order, the note of issue may be filed; and it is further

ORDERED that no adjournments of the above are permitted absent Court approval; and it is further

ORDERED that, within 20 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 make all required notations thereof in the records of the court; and it is further

ORDERED that such 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)].

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby expressly denied.

  
DENISE M DOMINGUEZ, J.S.C.

12/107/2024  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE