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### **Bowlero Atlantic Station, LLC v. Regal Cinemas, Inc., Order on Motion to Compel Discovery**

John J. Goger

*Superior Court of Fulton County, Metro Atlanta Business Case Division*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA  
METRO ATLANTA BUSINESS CASE DIVISION**

BOWLERO ATLANTIC STATION, LLC,

*Plaintiff,*

v.

REGAL CINEMAS, INC.; BLALOCK  
BUILDING COMPANY, INC.; A & I  
INTERIORS, LLC; EXTREME WALL  
INTERIORS, LLC; and MILLER  
BUILDING COMPANY OF GEORGIA,  
LLC

*Defendants.*

CIVIL ACTION FILE  
NO. 2021CV346723

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**ORDER ON DEFENDANT BLALOCK BUILDING COMPANY, INC.’S  
MOTION TO COMPEL DISCOVERY**

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This matter comes before the Court on Defendant Blalock Building Company, Inc.’s (“Blalock’s”) Motion to Compel Discovery filed on April 1, 2022 (“Motion”). Having reviewed the record and the applicable law, the Court enters the following order.

**1. BACKGROUND**

**1.1 The Parties**

Plaintiff Bowlero Atlantic Station, LLC (“Bowlero”) leases space at Atlantic Station in the Midtown area of Atlanta. (Compl. ¶ 10.) In June of 2019, Bowlero

proceeded to build out its leased space, seeking to convert it into a bowling, dining, and entertainment venue (the “Bowlero Project”). (Id. ¶¶ 16-17.) Bowlero is an affiliate of “the Bowlero Corporation family of companies” which own and operate over 300 bowling/entertainment venues throughout the world. (Id. ¶ 11; Resp. 4.) Bowlero alleges a grand opening for the Atlantic Station facility was intended for November 1, 2019 so as to take advantage of the 2019 holiday season, typically a lucrative time for similar venues. (Id. ¶¶ 23- 24.)

Regal is also a tenant at Atlanta Station where it operates a multi-level facility that is both adjacent to and partially above Bowlero’s leased space. (Id. ¶¶ 13-14; Blalock Ans. ¶¶ 13-14.) During the Bowlero Project, Regal was conducting an extensive renovation of its own leased premises (the “Regal Cinemas Project”). (Id. ¶ 25; Blalock Ans. ¶ 25.) Blalock was Regal’s general contractor and oversaw the renovation. (Id. ¶ 26; Blalock Ans. ¶ 25.) Blalock subcontracted portions of the Regal Cinemas Project to A&I and Miller Building, and A&I subcontracted portions of its work to Extreme Wall. (Id. ¶¶ 27-28; Blalock Ans. ¶¶ 27-28.)

## 1.2 The Flooding Events

This dispute arises from two separate flooding events that occurred approximately three weeks apart in the fall of 2019. As alleged by Bowlero, both flooding events were caused by construction activities for the Regal Cinemas Project and involved the pressurized lines supplying water to the fire sprinkler system

serving the entire Atlantic Station complex. (Id. ¶¶ 29, 36.) Bowlero claims the Defendants failed to exercise reasonable care while working in vicinity of the pressurized lines and in failing to promptly detect each of these water leaks and immediately shut off the water supply. (Id. ¶¶ 34, 38.)

### 1.3 Bowlero's Damages

After each of these flooding events, Bowlero contends the physical space it leased as well as the contents were saturated including the ceiling insulation, bowling lanes, walls, floors, and personal property. (Id. ¶¶ 35, 39.) Bowlero further contends that, because of these flooding events, its opening did not occur until October 30, 2020, approximately one year later than planned. (Id. ¶ 45.) In responding to this Motion, Bowlero notes that its landlord repaired many of the physical damages caused by the two flooding events such that Bowlero's damages consist primarily of, "the costs of responding to the Flooding Events, management of some or all of the repairs, investigation costs, testing expenses, and lost profits. (Pl.'s Resp. 2.) With regard to its lost profits, Bowlero estimates they exceed \$1.7 million. (Resp. 7.)

## **2. PROCEDURAL POSTURE**

Bowlero filed the instant suit on March 21, 2022. Its Complaint includes separate claims for negligence, negligent construction, nuisance, interference with

enjoyment of private property, attorney's fees, and punitive damages. Jointly with Regal, Blalock filed its answer on May 19, 2021.

On September 25, 2023, the parties filed a Consent Motion to Transfer Case to the Metro Atlanta Business Case Division. The transfer was approved in accordance with the Division's governing Rule 1004, and an Order of Transfer to the Business Case Division was entered on October 30, 2023. At the time of transfer, several motions were pending, including this discovery dispute.

### **3. STANDARD OF REVIEW**

O.C.G.A. § 9-11-26 (b) (1) provides that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” “A trial court’s substantial discretion over the discovery process includes balancing competing interests related to a party’s discovery requests.” Martin v. Fulton County Bd. of Registration & Elections, 307 Ga. 193, 218 (2019).

### **4. ANALYSIS**

Blalock moves that Plaintiff be compelled to produce the following: (1) summary of revenue and expenses for each Bowlero bowling location for the past five years and (2) insurance policies covering Bowlero Atlantic Station’s business or property at the time of the flooding through the present. Defendant Blalock also

alleges that Bowlero has failed to timely supplement additional discovery responses and moves the Court to mandate Bowlero to provide such supplementation.

#### 4.1 Protective Order

The docket does not reflect the entry of a protective order. The Court's order contemplates the production of information that Bowlero contends is confidential or proprietary. (See generally Resp. 8, 10; Mot. Ex. D Resp. to RFP No. 4.) Accordingly, immediately upon the entry of this Order, the parties should submit a proposed Consent Confidentiality/Protective Order setting forth procedures to govern the exchange of any confidential, proprietary or otherwise sensitive information. Such order should be presented to the Court ***no later than two weeks after the entry of this order.*** If the parties cannot agree on such an order, they should alert the Court to the precise subject of their disagreement.

#### 4.2 Financial Data for Other Bowlero Locations

Among the information Blalock sought in its First Request for Production of Documents was, ***“a summary of revenue and expense for each Bowlero location for the past five years.”*** (Mot. Ex. C RFP No. 4.) Plaintiff objected to this request, claiming it was a “fishing expedition for financial documents.” (Id. Ex. D Resp. to RFP No. 4.) It also objected, asserting the information sought was “confidential and/or proprietary in nature.” (Id.) Plaintiff produced certain information subject to its objections. Specifically, Plaintiff produced information used by its damages

expert to calculate its lost profit damages. That expert considered information about five “comparable” Bowlero locations that Plaintiff self-selected. As described by Blalock, Plaintiff provided the first-year operating details for Bowlero Arcadia (California) and Tuscaloosa (Alabama), and 2018 and 2019 operating details for Times Square (New York), Cupertino (California), and Miami (Florida). (Mot. § B.i.)

Plaintiff argues that it operates over 300 bowling facilities nationwide that use distinctive business models and target different customers which renders Blalock’s request as overly broad and unduly burdensome. (Pl.’s Resp. 4.) Bowlero describes the Bowlero-branded centers as featuring, “open bowling, group events, league play, dining, and games in an environment akin to a ‘club like’ destination center.” (Id.) Bowlero asserts it operates certain upscale venues under its “Bowlmor Lanes” banner as well as “old school” bowling alleys such as its “AMF centers.” (Id.) As another example, Plaintiff contends it purchased a number of Brunswick Bowling & Billiards facilities in 2014 that it re-branded as either Bowlero or AMF. (Id.) The Court finds Plaintiff’s objection is overstated as Blalock clearly reflects it is only looking for information for Plaintiff’s Bowlero-branded locations and even Plaintiff has suggested “a more narrowly tailored request” might withstand objection. (Reply 4; Resp. 17.)

Based on the unique facts of this case which have led Plaintiff to request lost profits on a facility that had yet to open, it will need to be more forthcoming regarding the revenues generated by its Bowlero-branded centers. In light of the foregoing, the Court finds the request as concerns Plaintiff's Bowlero-branded locations is generally within the scope of permissible discovery. See generally Ultra Group of Cos., Inc. v. S & A 1488 Mgmt., Inc., 357 Ga. App. 757, 760-761 (2020)(in order to recover lost profits, a plaintiff must demonstrate a "proven track record of profitability"). Accordingly, Plaintiff shall provide summaries of the expense and revenue information for each Bowlero-branded facility beginning as of January 2018. This five-year span should provide information that could lead to the discovery of admissible evidence regarding the profitability of these types of bowling facilities both before and after the pandemic. This information should be provided to Blalock *no later than two weeks after entry of the aforementioned protective order.*

#### 4.3 Bowlero Insurance Policies

In its interrogatories, Blalock asked Plaintiff to "*identify any and all insurance policies covering any aspect of Bowlero Atlantic Station's business or property from September 1, 2019, until present.*" (Mot. Ex. G Interrog. No. 28.)<sup>1</sup>

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<sup>1</sup> Similarly, in a request for production of documents, Blalock sought any such policy identified by Plaintiff as well as related communications. (Mot. Ex. G RFP 45.)



Plaintiff objected on the grounds of relevancy and the unlikelihood that the information would lead to the discovery of admissible evidence, “given that Bowlero has not made any claims against any of its insurance policies related to the flooding events which are the subject matter of this action.” (Id. Ex. H Gen. Obj. (7).) As this issue has developed in briefing, it appears Blalock’s request has narrowed to Bowlero’s business interruption coverage. (Id. § B.ii., Reply 9.)

A novel issue concerning Plaintiff’s claim for lost profits is the impact of the COVID-19 pandemic may have had on the Atlantic Station revenues had its opening not been delayed by the fall 2019 flooding events. By its own admission, Bowlero’s claim for “lost business income does not include any adjustment resulting from the novel Coronavirus or the associated government-imposed shutdowns.” (Resp. 7.) By way of explanation, Bowlero contends that had the Atlantic Station facility “been open as originally scheduled on November 1, 2019 . . . Bowlero could have submitted a claim with its business interruption insurance policy. [Cit.]” (Id.)

Because Bowlero’s damages calculations are admittedly based on the premise that it had business interruption coverage which would have extended to the Atlantic Station location once it became operational, Blalock should be able to test this assertion by reviewing any such policy to confirm whether Plaintiff has accurately considered its applicability and coverage. Therefore, Plaintiff shall provide Blalock with the requested insurance policy information about its business interruption

coverage *no later than two weeks after the entry of the aforementioned protective order.*

#### 4.4 Supplementation

Finally, Defendant Blalock requests that Plaintiff be directed to supplement its discovery responses and production as concerns Defendant's Request for Documents Nos. 5-10, 12, 19, 47, and 48 as well as Interrogatories Nos. 30-31. (Mot. § B.iii.) In briefing, both Blalock and Plaintiff outline these requests as fitting within six general categories (Id.; Resp. 17-21.)

##### *4.4.1 An itemization of the damages attributed to each flooding event individually*

In Interrogatories No. 30-31, Blalock asked Plaintiff to itemize the damages for each separate flooding event. (Id. Ex. G Interrog. No. 30-31.) Bowlero objected "to the extent that Bowlero's damages have not yet been separated or itemized specifically" in relation to each flooding event and noted it was still gathering information about its damages. (Id. Ex. H Interrog. Resp. No. 30-31.) In responding to this Motion, Plaintiff contends, "Blalock was a joint tortfeasor bearing responsibility for both flooding events, which occurred so close in time that they were essentially a single event," such that a "jury must assign apportionment, if any, as appropriate." (Resp. 3-4.)

While the Court is mindful of Plaintiff's legal position, the Court will not issue a legal ruling on the thorny issue of just how Georgia's apportionment statute,

O.C.G.A. § 51-12-33(b), and concepts of joint and several liability may apply to this peculiar set of facts. To the extent itemization of damages caused by a specific flooding event is possible, Plaintiff is directed to identify those damages. Said itemization shall be provided *no later than two weeks after the entry of the aforementioned protective order.*

*4.4.2 All reports, correspondence, notes, and memos which describe the effect of COVID-19 on the profitability of any Bowlero location*

Subject to its objections, including that the request was overly burdensome, Plaintiff produced certain documents responsive to this request and indicated it would produce additional documents as they became available. (Mot. Ex. D RFP Resp. No. 7.) The Court finds that the information it has already directed Plaintiff to provide, about the revenues and expenses of Bowlero-branded locations is sufficient to inform Blalock about the impact of the pandemic on profitability of Bowlero-branded bowling locations. The Court will not order Plaintiff to produce any further documents under this general request for information about every Bowlero location on the grounds the request is unduly burdensome.

*4.4.3 Other Categories*

The remaining categories where Blalock seeks supplementation of Plaintiff's production and/or responses include:

- *All documents supporting the assertion that Atlantic Station Bowlero was set to open by November 1, 2019 and all correspondence and notes relating to the anticipated date of opening*
- *All advertisements, press releases, and other documents communicating the anticipated opening date*
- *Additional documents related to any construction or repair on any aspect of the ceiling of the Premises, including the K-13 insulation, after the first leak*
- *Any change order regarding the use of MonoGlass as an alternate to K-13*

As to each of these categories, ***no later than two weeks after the entry of the aforementioned protective order***, Plaintiff is directed to, if necessary, supplement its production and/or response **and** provide Blalock with a written certification stating: (1) Plaintiff has completed a comprehensive search of all the documents within its possession, custody, and control and (2) no additional responsive documents have been located.

## **5. CONCLUSION**

For the reasons outlined above, Defendant Blalock Building Company, Inc.'s Motion to Compel Discovery is **GRANTED IN PART** and **DENIED IN PART**. Each parties' request for attorney's fees incurred in either preparing or responding to the Motion is **DENIED**. O.C.G.A. § 9-11-37(a)(4)(C).

**IT IS SO ORDERED** this 2nd day of January, 2024.

/s/ John J. Goger  
JOHN J. GOGER, SENIOR JUDGE  
Superior Court of Fulton County  
Atlanta Judicial Circuit  
Metro Atlanta Business Case Division

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