

Certainteed Corp. v. Superior Court (2014) 222 Cal.App.4th 1053

Exception to 7-hour deposition time limit also applies to the complex case 14-hour limit.

FACTS AND PROCEDURAL POSTURE

In July, 2013 plaintiff William Hart sued various defendants for damages resulting from exposure to asbestos. Because Hart was 76 years old, and in poor health, the trial date was set for January 2014. Plaintiff's counsel noticed plaintiff's deposition and conducted a direct examination lasting approximately 14 hours total over several days. Defendants conducted several hours of examination and then filed a motion for additional time to complete the deposition. The day before the hearing on the motion, plaintiff's counsel suspended the deposition after defendants had reached 14 hours of examination.

Code of Civil Procedure § 2025.290(a) limits depositions to 7 hours of total examination by all counsel other than the deponent's own counsel. Subdivision (a) also states that the court "shall allow additional time, beyond any limits imposed by this section, if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination." Subdivision (b)(3) permits 14 hours in complex cases, but does not include the exception found in subdivision (a).

The trial court denied the defendants' motion. It determined that the defendants were limited to 14 total hours and that the court did not have the discretionary authority to permit the deposition to exceed 14 hours. Defendants filed a petition for writ of mandate.

DISCUSSION

On review, the court of appeal held that the exception found in 2025.290(a) also applies to subdivision (b)(3). Both the 7 hour and the 14 hour time limits are presumptive: they only apply so long as the court does not make an order otherwise. The language of subdivision (a) unambiguously gives the trial court discretion to allow additional time beyond the 7 hour time limit. The language of subdivision (a) includes the phrase "beyond any limits imposed by this section..." The court explained that the use of the word "section" rather than "subdivision" indicates the legislature's intent that the exception apply to 2025.290 as a whole, rather than apply only to subdivision (a). Also, given the wording of the exception, *the court is required to allow additional time* to depose a witness unless the court, in its discretion, determines that the deposition should be limited for another reason.

Accordingly, the court held that the denial of the defendants' motion was clearly erroneous. The court directed the trial court to vacate its order denying the motion and to reconsider and enter a new order taking into account the totality of the circumstances such as the plaintiff's present health and physical condition, the plaintiff's right to a preferential trial date, the need of the defendants for further examination of the plaintiff, and any other relevant circumstances that the interests of justice may require.