

Matter of Derr v United Nations Dev. Corp.

2024 NY Slip Op 31368(U)

April 19, 2024

Supreme Court, New York County

Docket Number: Index No. 160318/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of
RICHARD DERR,

Petitioner,

- v -

UNITED NATIONS DEVELOPMENT CORP. and C&W
FACILITY SERVICES, INC.,

Respondents.

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INDEX NO. 160318/2023
MOTION DATE 04/19/2024
MOTION SEQ. NO. 001

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 27, 18, 19, 20, 21, 22

were read on this motion to/for PREACTION DISCLOSURE.

In this proceeding pursuant to CPLR 3102(c), the petitioner seeks pre-action disclosure from the respondents, compelling them to disclose documents and records concerning inspections, complaints, maintenance records, invoices, permits, repair records, and violations with respect to the freight elevator located at 1 United Nations Plaza, New York, New York 10017 for a period of 10 years prior to May 20, 2021, elevator maintenance contracts pertaining to that elevator that were in effect on May 20, 2021, video footage of the petitioner’s May 20, 2021 accident on that elevator, and incident reports, photographs, investigation documents, witness statements, and memoranda pertaining to that accident. He also seeks documents referable to New York City Department of Buildings (DOB) Permit No. M00318786-II-EL. The respondents separately answer the petition. The petition is granted to the extent that the respondent C&W Facility Services, Inc. (C&W), is directed to provide the petitioners with any documents, records, and videos in its possession that are responsive to the petitioner’s demands, other than those referable to the DOB permit. The petition is denied as academic as to the respondent United Nations Development Corp. (UNDC) with respect to all of the

documents sought other than those referable to the DOB permit, and denied on the merits as to both respondents with respect to the documents referable to the permit.

In the October 27, 2023 order to show initiating this proceeding, the petitioner had sought pre-action disclosure with respect to a freight elevator located at 2 United Nations Plaza in Manhattan. In his petition, the petitioner claimed that he had been involved in an accident in that elevator on May 20, 2021, and that he needed those documents and videos in order to frame a complaint sounding in negligence. The respondents informed the petitioner that, in fact, the subject accident occurred at 1 United Nations Plaza. Consequently, this court issued an amended order to show cause, dated March 29, 2024, that corrected the location of the elevator as to which the petitioner was seeking documents and videos. After service of the amended order to show cause upon the respondents, the respondent United Nations Development Corp. (UNDC) agreed to provide the petitioner, in a shared file computer format, all of the documents and videos responsive to his demand, other than those referable to the permit. Both UNDC and C&W, however, opposed the branch of the petition seeking documents referable to the DOB permit, as that permit pertained only to the elevator at 2 United Nations Plaza, which was irrelevant to the petitioner's potential tort claims. C&W did not otherwise oppose the petition.

CPLR 3102(c) authorizes a court to permit a party to conduct pre-action disclosure to aid in framing a complaint and in identifying prospective defendants (*see Sims v Metropolitan Transp. Auth.*, 123 AD3d 496, 496 [1st Dept 2014]; *Walker v Sandberg & Sikorski Corp. Firestone, Inc.*, 102 AD3d 415, 415 [1st Dept 2013]; *Matter of Champion v Metropolitan Tr. Auth.*, 70 AD3d 587, 588 [1st Dept 2010]). A petitioner seeking leave to conduct pre-action disclosure must demonstrate that he or she has a potentially viable cause of action against some person or entity, and that the disclosure sought is material and necessary to the proof of an actionable wrong (*see Matter of Woodbridge Structured Funding, LLC v Pissed Consumer*, 125 AD3d 508, 508 [1st Dept 2015]; *Matter of Peters v Sotheby's Inc.* 34 AD3d 29, 34 [1st Dept 2006]; *Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept 1989]). The resort to pre-

action disclosure, however, “is not permissible as a fishing expedition to ascertain whether a cause of action exists” in the first instance (*id.* at 536).

The court concludes that the petitioner has established his entitlement to pre-action disclosure of documents and records concerning inspections, complaints, maintenance records, invoices, permits, repair records, and violations, with respect to the freight elevator located at 1 United Nations Plaza, New York, New York 10017 for a period of 10 years prior to May 20, 2021, elevator maintenance contracts pertaining to that elevator that were in effect on May 20, 2021, video footage of the petitioner’s May 20, 2021 accident on that elevator, and incident reports, photographs, investigation documents, witness statements, and memoranda pertaining to that accident, as he has established that they are necessary to enable him to frame a complaint sounding in negligence. The court notes, moreover, that UNDC already has agreed to provide, or already has provided, documents and videos in its possession that are responsive to those demands. Hence, the branch of the petition seeking those documents and videos must be denied as academic as to UNDC. Since C&W has not yet provided responsive documents or videos in its possession, or provided a *Jackson* affidavit (*Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992]) attesting that it does not possess such documents or videos, or describing the particulars of the search that it undertook to locate those documents and videos, and that the search revealed that the documents and videos no longer existed or couldn’t be located, the petition must be granted against C&W as to those documents and videos.

The court agrees with the respondents that the petitioner has not established the need for disclosure of records pertaining to the DOB permit that he identified in his petition, as they are irrelevant to his ability to frame a complaint alleging negligence in the maintenance and operation of the elevator in which he claims to have sustained an accident.

Accordingly, it is,

ADJUDGED that the petition is granted insofar as asserted against the respondent C&W Facility Services, Inc., to the extent that the petitioner seeks pre-action disclosure of documents

and records concerning inspections, complaints, maintenance records, invoices, permits, repair records, and violations, with respect to the freight elevator located at 1 United Nations Plaza, New York, New York 10017 for a period of 10 years prior to May 20, 2021, elevator maintenance contracts pertaining to that elevator that were in effect on May 20, 2021, video footage of the petitioner's May 20, 2021 accident on that elevator, and incident reports, photographs, investigation documents, witness statements, and memoranda pertaining to that accident, and the petition is otherwise denied and the proceeding is otherwise dismissed insofar as asserted against C&W Facility Services, Inc.; and it is further,

ADJUDGED that the petition is denied and the proceeding is dismissed insofar as asserted against the respondent United Nations Development Corp.; and it is further,

ORDERED that, on or before May 10, 2024, C&W Facility Services, Inc., shall provide the petitioner with documents and records concerning inspections, complaints, maintenance records, invoices, permits, repair records, and violations, with respect to the freight elevator located at 1 United Nations Plaza, New York, New York 10017 for a period of 10 years prior to May 20, 2021, elevator maintenance contracts pertaining to that elevator that were in effect on May 20, 2021, video footage of the petitioner's May 20, 2021 accident on that elevator, and incident reports, photographs, investigation documents, witness statements, and memoranda pertaining to that accident, or an appropriate *Jackson* affidavit; and it is further,

ORDERED that, to the extent that United Nations Development Corp. has yet to provide the petitioner with shared-file computer access to the agreed-upon documents and records concerning inspections, complaints, maintenance records, invoices, permits, repair records, and violations, with respect to the freight elevator located at 1 United Nations Plaza, New York, New York 10017 for a period of 10 years prior to May 20, 2021, elevator maintenance contracts pertaining to that elevator that were in effect on May 20, 2021, video footage of the petitioner's May 20, 2021 accident on that elevator, and incident reports, photographs, investigation

documents, witness statements, and memoranda pertaining to that accident, it shall do so no later than May 10, 2024.

This constitutes the Decision, Order, and Judgment of the court.

4/19/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: