

Allen v Lasership, Inc.
2004 NY Slip Op 30402(U)
October 29, 2004
Supreme Court, New York County
Docket Number: 113243/04
Judge: Ronald A. Zweibel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50Q

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HAROLD ALLEN, :
Index Number: 113243/04
Petitioner, : Decision & Order

-against- :

LASERSHIP, INC., :

Respondent. :
-----X
ZWEIBEL, J. :

Petitioner Harold Allen moves, pursuant to CPLR 3102(c), to compel discovery and inspection of certain invoices, leases, contracts, records, agreements and incident reports made and kept by respondent Lasership, Inc., its agents, servants and/or employees in the ordinary course of their business having and concerning an incident which occurred on November 4, 2003 at respondent's place of business at 34 West 32nd Street, New York, New York. Petitioner alleges that while in the course of his employment for respondent, he was injured during the unloading of material being delivered by a third party, whose employees caused parts or portions of the material being unloaded to fall upon, and cause injury to, petitioner. According to petitioner, the accident was immediately reported to the petitioner's employer. Petitioner received Worker's Compensation benefits as a result of a work related injury.

Petitioner claims to have no knowledge of the identity of those individuals responsible for the delivery and unloading of the materials which fell upon him causing injury. The identity of

those making the subject delivery is in the sole possession of respondent. Petitioner claims that he has no other means of acquiring the necessary information to pursue his rights against the responsible third party(s).

According to petitioner, there is no prejudice to respondent. The production of the material requested is not onerous or burdensome to respondent and is material and necessary to the investigation and possible prosecution of petitioner's claims against any third parties responsible for this occurrence. Respondent has neither appeared nor opposed petitioner's application.

CPLR section 3102(c) provides that "(b)efore an action is commenced, disclosure to aid in bringing an action...may be obtained, but only by court order." The assessment of the propriety of pre-litigation discovery lies within the sound discretion of the Court (see Thomas v. New York City Transit Police Dept., 91 A.D.2d 898, 899 [1st Dept. 1983]; Hoffman v. Batridge, 155 Misc.2d 862, 865 [Nassau Co. 1992]). In a proper case, pre-action discovery is permitted to assist a potential litigant to frame a complaint or identify a prospective defendant (see Manufacturers and Traders Trust Co. v. Bonner, 84 A.D.2d 678, 679 [4th Dept. 1981]; Hoffman v. Batridge, 155 Misc.2d, at 865-66). Entitlement to disclosure to aid in framing of a complaint must be predicated upon a showing that the party seeking discovery has a

meritorious cause of action (see Gleich v. Kissinger, 111 A.D.2d 130, 131 [1st Dept. 1985]; Hoffman v. Batridge, 155 Misc.2d, at 866).

In this case, petitioner was injured by an unknown third party during the course of his employment by respondent. He believes that he has a claim for personal injury against that unknown third party. Respondent is in possession of information identifying that responsible third party(s). Without this information, petitioner claims that he will be unable to enforce his legal rights against the responsible third party(s) as petitioner will be unable to ascertain the individual's or individuals' identity(s). Hence, petitioner's present application.

Given the lack of opposition by respondents, this Court finds that petitioner has made an adequate showing that he is entitled to pre-action disclosure to assist him in identifying a prospective defendant and that petitioner has a meritorious cause of action.

Accordingly, upon reading and filing of the annexed affirmation of James E. Gear, sworn to on August 23, 2004, it is hereby

ORDERED that the petitioner's application for pre-action discovery and inspection discovery and inspection of certain invoices, leases, contracts, records, agreements and incident reports made and kept by respondent Lasership, Inc., its agents,

servants and/or employees in the ordinary course of their business having and concerning an incident which occurred on November 4, 2003 at respondent's place of business at 34 West 32nd Street, New York, New York. is granted, as the respondent has not opposed the instant application by appearing or answering the instant petition, and it is further

ORDERED that petitioner shall serve upon respondent a copy of this Decision & Order with a copy of the notice of entry and it is further

ORDERED that the respondent, by its duly authorized representative, shall turn over to petitioner or make arrangements for petitioner to inspect the appropriate documents within twenty (20) days of service of a copy of this order with notice of entry.

This constitutes the decision order and judgment of this Court.

ENTER:


RONALD A. ZWEIFEL, J.S.C.

Dated: October 29, 2004