

<b>Allen v Lasership, Inc.</b>
2005 NY Slip Op 30621(U)
February 15, 2005
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 500

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HAROLD ALLEN, :

Index Number 113242/14  
Petitioner, : Decision & Order

-against-

LASERSHIP, INC.,

Respondent :  
COUNTY OF NEW YORK  
CLERK'S OFFICE  
FEB 25 2005

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ZWEIBEL, J.:

Petitioner Harold Allen moves, pursuant to CPLR 3102(c), for an Order 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 32<sup>nd</sup> Street, New York, New York and for appropriate sanctions for the respondent's wilful refusal to comply with a prior Order of this Court granting the same relief sought herein, to wit, discovery and inspection of the above material. Respondent has neither appeared nor answered the papers underlying the Order to Show Cause and is in default.

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

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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.

This Court previously granted petitioner the relief sought herein in a decision and order of this Court, dated October 29, 2004. The decision and order with Notice of Entry was duly served upon respondent on November 8, 2004. On November 12, 2004, via facsimile, petitioner's attorney received from the respondent petitioner's salary information. Respondent was immediately contacted that the information sent was not the information which was ordered to be provided. Since that time, petitioner's attorney personally spoke with Nick Aandriola, General Manager of

respondent, but to no avail.

On December 27, 2004, by certified mail, return receipt requested, petitioner's attorney once again sought respondent's compliance with the Court's directives. To date, respondent continues to disobey this Court's order.

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 respondent, this Court again 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. Also, given respondent's previous inaction and respondent's failure to appear or answer the instant petition, the Court agrees that a further Order of this Court is necessary.

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 32<sup>nd</sup> 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 within  
five days 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  
and it is further

ORDERED that if respondent fails to comply with turning over  
or making arrangements for petitioner to inspect the appropriate  
documents by March 31, 2005, respondent will be sanctioned \$200.00  
and an additional \$25.00 a day sanction will be imposed for each  
day thereafter that respondent does not comply with the Order of  
this Court.

This constitutes the decision order and judgment of this  
Court.

**FILED**

FEB 25 2005

NEW YORK

COUNTY CLERKS OFFICE

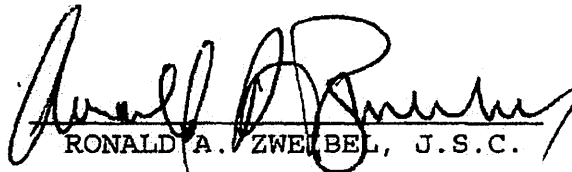
Dated: February 15, 2005

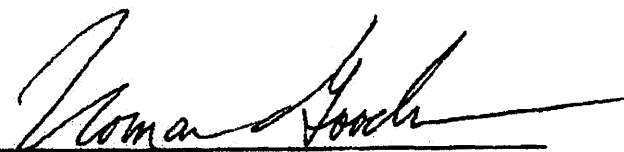
**FILED**

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COUNTY CLERKS OFFICE  
NEW YORK

ENTER:

  
RONALD A. ZWEIFEL, J.S.C.

  
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