

Matter of Huck v City of New York

2007 NY Slip Op 31501(U)

May 23, 2007

Supreme Court, New York County

Docket Number: 0106752/2007

Judge: Kibbie F. Payne

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

In the Matter of the Application of

CHRISTOPHER HUCK,

Petitioner,

INDEX NO. 106752/07

MOTION DATE 5/23/07

For an Order of Disclosure for Purposes of
Bringing an Action Pursuant to CPLR section 3102 (c),

- against-

MOTION SEQ. NO. 001

CITY OF NEW YORK and THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

MOTION CAL. NO. _____

Respondents.

The following papers, numbered 1 to _____ were read on this motion to/for _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...
Answering Affidavits – Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, petitioner's motion, by order to show cause, for an order pursuant to CPLR 3102 (c) is denied in accordance with the attached memorandum.

FILED

JUN 07 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5-23-07

(Signature)
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4**

In the matter of the Application of

Christopher Huck,

Petitioner,

Index No. 106752/07

Motion Seq. 001

ORDER

For a Order of Disclosure for Purposes
of Bringing an Action Pursuant to CPLR
3102 (c),

-against-

CITY OF NEW YORK and THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENT PROTECTION,

Respondent.

KIBBIE F. PAYNE, J.:

Petitioner moves, by order to show cause, for an order pursuant to CPLR 3102 (c) for disclosure to aid in bringing an action. Petitioner's motion was submitted on default on May 23, 2007. Petitioner contends that he was seriously injured on May 25, 2004, while an employee of respondent the New York City Department of Environment Protection (DEP). Petitioner was allegedly "cleaning polymer from the floor in [a DEP] polymer holding tank room" when he slipped and sustained the harm. Petitioner filed a Workers' Compensation claim against the DEP, and now seeks to bring an action against DEP's polymer supplier. Contending that the applicable Statute of Limitations to a negligence action expires on May 25, 2007, petitioner brought this order to show cause on May 21, 2007.

Petitioner requests the court direct the DEP to "produce for deposition, on a date certain on or before May 24, 2007, a representative . . . who is knowledgeable about and able to identify that entity who supplied polymer to the [DEP] building . . . during the one month period leading up to and including May 25, 2004; and that said witness bring with him to said deposition all records pertaining to such services performed or contracted by said entity." Petitioner additionally seeks to inspect and photocopy "contracts, documents written statements regarding the inspection maintenance and/or repair of the condition and/or the request for repairs, prior to instituting suit in order to identify who performed certain maintenance, cleaning and/or removal of polymer at the time of the subject accident, and further directing respondents to produce a witness for deposition with knowledge as to [the] entity who performed certain maintenance and further directing the [DEP] deliver and make available all contracts, leases, documents, written statements and repair records, memoranda and other recordings concerning said entity." Petitioner fails to offer any excuse for both seeking and demanded that such disclosure be completed within a few days of the date the Statute of Limitations is set to expire.

"Before an action is commenced, disclosure to aid in bringing an action . . . may be obtained, but only by court order" (CPLR 3102 [c]). "[W]hile pre-action disclosure may be

appropriate to . . . identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing" (Uddin v New York City Trans. Auth., 27 AD3d 265, 266 [1st Dept. 2006] [citation omitted]). "A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong" (id.). "[I]n assessing the propriety of [granting such relief], a sensitive balance must be struck between the intrusiveness of the discovery device as against the merits, or lack thereof, of the claim (see Belco Petroleum Corp. v AIG Oil Rig, Inc., 179 AD2d 516, 517 [1st Dept. 1992] [citation omitted]).

Petitioners allegations here fail to meet the requisite standard. His papers merely provide that he sustained a slip and fall while cleaning polymer from the floor at a DEP building. Petitioner's counsel alleges that "we [presumably counsel's offices] have been advised [by an undisclosed source] that the polymer was spilled through the acts or omissions of a third-party vendor who provided the polymer." Petitioner fails to allege the supplier negligently caused the spill or any facts to support such a claim. Accordingly, it is

ORDER that petitioner's motion is denied and this proceeding is dismissed.

The foregoing constitutes the decision and order of the court.

DATED: 5/23/07


KIBBIE F. PAYNE, J.S.C.