

Carrillo v Brown
2017 NY Slip Op 31937(U)
August 15, 2017
Supreme Court, Queens County
Docket Number: 705833/14
Judge: Howard G. Lane
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE IA Part 6
Justice

ADELINA CARRILLO and EDUARDO
CARRILLO,

Plaintiffs,

-against-

TERRANCE A. BROWN, et al.,

Defendants.

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Number 705833/14

Motion

Date September 6, 2016

Motion Seq. No. 5

Motion Cal. No. 26

Via decision/order dated March 10, 2017, this Court held in relevant part:

Plaintiffs seek to compel defendants City, NYPD and John Doe to produce all documents and/or recordings contained in the Organized Crime Control Bureau (OCCB) file relative to the subject incident of May 31, 2014, for in camera inspection, and subsequent disclosure to plaintiffs of any and all relevant and material information contained therein.

Defendants City, NYPD and John Doe do not oppose that branch of plaintiffs' motion seeking production of the OCCB file for in camera review, but argue that the documents contained therein should not be disclosed to plaintiffs as they are irrelevant, protected as a subsequent remedial measure, and protected by, among other things, the public interest privilege and Civil Rights Law § 50-a.

Plaintiffs' motion is granted to the extent that defendants City, NYPD and John Doe shall produce the

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OCCB file relative to the incident of May 31, 2014, to this court for in camera review, within 14 days after service upon them of a copy of this order with notice of entry. After in camera inspection, the court will determine what portions, if any, are subject to disclosure and direct defendants City, NYPD and John Doe accordingly (*see Schindler v City of New York*, 134 AD3d 1013 [2015]; *see also Cea v Zimmerman*, 110 AD3d 1027 [2013]; *McFarlane v County of Suffolk*, 79 AD3d 706 [2010]). The motion is otherwise denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff pedestrian, Adelina Carrillo, on May 31, 2014, when, while crossing the street at or near the intersection of Northern Boulevard and 86th Street in Queens County, she allegedly was struck by vehicles owned and operated by defendants Terrance A. Brown and Juliet Siy, which had collided at that intersection. In the complaint, plaintiffs allege, among other things, that at the time of the accident, defendant Brown's vehicle was being pursued at high speeds by undercover police vehicles, owned by defendants City and NYPD, and operated by defendant, John Doe.

Under CPLR 3101 there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action. The purpose of disclosure proceedings is to advance the function of trial, to ascertain truth and to accelerate disposition of suits. The CPLR further provides that disclosure should be construed broadly to effectuate this purpose (CPLR 3101[a][1][2]; *Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]). "Evidence" is defined to mean not the equivalent to that evidence which might be admissible on trial of the action, but means evidence required in preparation for trial. The information sought need not qualify as evidence admissible at the trial of an action, but only lead to such evidence. Disclosure is required as to all relevant information calculated to lead to relevant evidence (Siegel, NY Prac § 344 at 550 [4th ed 2005]). It is well-established law that under CPLR 3101(a), the parties may engage in liberal discovery of evidence that is "material and necessary" for the preparation of trial (*see, Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403 [1968]). "The words 'material and necessary' as used in the statute are to be interpreted liberally, to require disclosure, upon request, of any facts bearing on the controversy which will assist in the preparation for trial" (*Anonymous v. High School for Environmental Studies et. al.*, 820 NYS2d 573, 578 [1st Dept 2006] [citations omitted]). The Court is given broad discretion to supervise discovery (*Lewis v. Jones et. al.*, 182 AD2d 904 [3d Dept 1992]). "The test is one of usefulness and reason. CPLR 3101(subd [a]) should be construed . . . to permit discovery of testimony 'which is sufficiently related to the issues in litigation to

make the effort to obtain it in preparation for trial reasonable' (Weinstein-Korn-Miller, NY Civ Prac ¶3101.07, p. 31-13)" (*Allen, supra*). It is immaterial that the material sought may not be admissible at trial as "pretrial discovery extends not only to proof that is admissible but also to matters that may lead to disclosure of admissible proof" (*Twenty Four Hour Fuel Oil Corp v. Hunter Ambulance Inc.*, 226 AD2d 175 [1st Dept 1996]; *Polygram Holding, Inc. v. Cafaro*, 42 AD3d 339 [1st Dept 2007] ["disclosure extends not only to admissible proof but also to testimony or documents which may lead to the disclosure of admissible proof, including materials which may be used in cross-examination"]). The CPLR directs full disclosure of all relevant material. The test is one of usefulness and reason (CPLR 3101[a]; *Allen, supra*; *Andon v. 302-304 Mott Street Assoes.*, 94 NY2d 740 [2000]; *Hoenig v. Westphal*, 52 NY2d 605 [1981] [pre-trial discovery is to be encouraged, limited only by the test of *materiality of "usefulness and reason"*]; *Spectrum Sys. Int'l. Corp. v. Chemical Bank*, 78 NY2d 371, 376 [1991]). Moreover the adequacy and circumstances and reasons for the disclosure will ultimately be determined by the trial court, and the "determination of whether a particular discovery demand is appropriate, are all matters within the sound discretion of the trial court, which must balance competing interests." (*Id.*; *Santariga v. McCann*, 161 AD2d 320 [1st Dept 1990] [the scope and supervision of disclosure is a matter within the sound discretion of the court in which the action is pending]). Certain exceptions to the general rule exist, including privileged matter (CPLR 3101[b]). "The burden of demonstrating that particular items are exempt or immune from disclosure falls upon the party asserting such immunity." (citations omitted). (*Salzer v. Farm Family Life Insurance Company*, 280 AD2d 844, 845 [3d Dept 2001]; *see also, Allsbrooks v. McCrory's Inc.*, 82 AD2d 872 [2d Dept 1981]). Privileged matter is absolutely immune from discovery (*Spectrum Sys. Int'l. Corp. v. Chemical Bank*, 78 NY2d 371 [1991]).

Upon an in camera review of the OCCB file and of the Privilege Log of the City of New York, the Court finds as follows:

Page 1: Table of Contents = Not material and necessary

Page 2: Document relating to Investigation = Not material and necessary

Page 3-4: CPI (Central Personnel Index; Confidential Performance Report) = Not material and necessary, and even if such document was deemed material and necessary, said document refers to a Det. Thomas Ramirez as opposed to Police Officer Thomas Rivera, the defendant in the instance case.

Page 5-6: CPI (Central Personnel Index; Confidential Performance Report) = Not material and necessary

Page 13-17: Investigation Worksheet (Internal Case Information System Worksheet - Internal Affairs Log) = Only material and necessary regarding the "Details" portion on Page 16. All portions other than the portion entitled "Details" shall be redacted.

Page 40-46: Investigation Paperwork = Material; Subject to Disclosure

Page 47-64: Personnel records = Not material or necessary; Furthermore, when a police officer is acting within the scope of his employment at the time of the subject incident, personnel records are irrelevant (*Neiger v. New York City Transit Auth.*, 72 AD3d 663 [2d Dept 2010]; *Kourtalis v. City of New York*, 191 AD2d 480 [2d Dept 1993]).

Page 65-70: Investigation Worksheet = Not material and necessary except for the portion of Page 68 entitled "Details." All portions other than the portion entitled "Details" shall be redacted.

Page 71: Documents relating to investigation = Document relating to Investigation = Not material and necessary

Page 72-85: Documents relating to investigation = Material and Necessary; Subject to Disclosure

Page 86-91: Investigation Worksheet; Investigation Worksheet (Internal Case Information System Worksheet - Internal Affairs Log) = Not material and necessary except for the portion of Page 89 entitled "Details." All portions other than the portion entitled "Details" shall be redacted.

All pages other than those delineated above, shall be subject to disclosure as they are not objected to by defendant, the City, NYPD and John Doe.

This constitutes the decision and order of the Court.

A courtesy copy of this order is being mailed to counsel for the respective parties.

Counsel for defendants City of New York, NYPD and John Doe is directed to contact my chambers at (718) 298-0674 after September 5, 2017 to retrieve the file which was submitted to the court for in camera inspection. If the file is not retrieved by September 22, 2017, it will be destroyed without further notice.

Dated: August 15, 2017

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Howard G. Lane, J.S.C.

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