

Luckey v City of New York
2018 NY Slip Op 33008(U)
October 1, 2018
Supreme Court, Bronx County
Docket Number: 18937/2003
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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TARSHEKA LUCKEY and ANTONIO WATKINS, as
Proposed Administrators of the Estate of EVA LUCKEY,
and TARSHEKA LUCKEY, ANTONIO WATKINS, AJA
HANNEY, FELICIA TULLA and FREDRICK TULLA,
Individually,

Index No. 18937/2003

DECISION AND ORDER

Plaintiffs,

v.

THE CITY OF NEW YORK, THE NEW YORK CITY
HEALTH AND HOSPITAL CORPORATION, PRISON
HEALTH SERVICES, INC., ERIC PERRY, MYRTLE
POWELL and CONNIE RASHID,

Defendants.

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GONZALEZ, D.:

Upon: i) the Order to Show Cause, by Matthew Flamm, Esq., attorney for the plaintiffs, for an Order: a) pursuant to CPLR Rule 3101, CPLR Rule 3122, and CPLR Rule 3124, to compel answers to Plaintiff's May 1, 2018 Demand for Witness Identifying Information; and b) for such other and further relief as this Court deems just and proper; and ii) the Affirmation in Opposition, dated August 31, 2018, by Gabrielle Apfel, Esq., attorney for the defendants.

PROCEDURAL HISTORY

A Notice of Claim was served on defendants The City of New York ("City") and Health and Hospital Corporation ("HHC"), on or about April 16, 2003. A statutory hearing, pursuant to General Municipal Law Section 50H, was conducted on May 30, 2003.

The action was commenced by the filing of a Summons and Verified Complaint on June 19, 2003. Issue was joined by service of an Answer by defendants City and HHC, on or about July 11, 2003. Issue was joined by service of an Answer by defendant Prison Health Services ("PHS"),

on or about July 22, 2003. Issue was joined by service of an Answer by defendant Eric Perry (“Perry”), on or about August 4, 2003. Issue was joined by service of an Answer by defendant Myrtle Powell (“Powell”), on or about October 8, 2003.

Issue was not joined by defendant Connie Rashid (“Rashid”). The plaintiffs moved for a default judgment against defendant Rashid, on or about September 17, 2003. By order, dated March 24, 2004, Justice Douglas McKeon granted the default judgment.

On or about September 5, 2003, the plaintiffs served Combined Demands, which included a Demand for Witness Information. The defendants served a Response to the plaintiffs’ Combined Demands, on or about December 3, 2003, which did not contain witness information. On or about January 21, 2005, the defendants served an Amended Response to the plaintiffs’ Demands that listed names and booking numbers for thirty-two (32) Riker’s inmates. On or about May 2005, the defendants exchanged discovery, which included thirty-eight (38) witness statements from inmates.

On or about May 1, 2018, the plaintiffs served a Demand for Witness Information seeking the addresses and social security numbers of the witnesses identified by the defendants in the discovery responses. The defendants did not provide a response to the May 1, 2018 demand. The plaintiffs move to compel.

This is a pre-note of issue case and a status conference is scheduled for November 1, 2018.

FACTUAL BACKGROUND

This is an action to recover damages for the plaintiff’s death on April 25, 2002, at the Rose M. Singer Correctional Center at Riker’s Island, in the County of Queens, City and State of New York. It is alleged that on April 25, 2002, the plaintiff Eva Luckey, an inmate, suffered an asthma

attack and died. It is also alleged the defendants failed to provide timely medical care and treatment to the plaintiff.

The plaintiffs seek to compel disclosure arguing that witness information is a fundamental discovery demand that is relevant and material to this litigation. The plaintiffs contend that the defendants' prior discovery responses were insufficient to locate the witnesses for deposition and trial since it only provided their names and booking numbers.

The defendants oppose the motion arguing that the plaintiffs' discovery demand is overbroad and burdensome. The defendants argue that witness information and statements were previously provided in 2005. The defendants contend that they are not able to locate the information requested since the alleged witnesses are no longer held at Riker's Island.

DISCUSSION OF LAW

It is well settled that CPLR 3101 provides for full disclosure of all evidence material and necessary in the prosecution or defense of an action, and that trial courts are vested with broad discretion in supervising disclosure (*Wyda v Makita Elec. Works, Ltd.*, 162 AD2d 133 [1st Dept 1990]). Discovery demands that are patently burdensome should be stricken (*Id.*; *Dykowski v New York City Tr. Auth.*, 124 AD2d 465 [1st Dept 1986]; *Metzger v Brockman*, 92 AD2d 499, 500 [1st Dept 1983]).

Based on the record, the plaintiffs' demand for witness information is unduly burdensome. The plaintiffs waited approximately fifteen (15) years to demand the addresses and social security numbers of potential witnesses who are no longer incarcerated at Riker's Island. While the information requested may be necessary to prosecute this action, the defendants should not be burdened to locate thirty-eight (38) former inmates fifteen (15) years later. In addition, the

plaintiffs were provided the names and booking numbers for each witness, and have similar means to locate the potential witnesses by an investigator.

ACCORDINGLY, based on the record before the Court, the applicable law, and due deliberation; it is hereby

ORDERED, that the plaintiffs' motion to compel is DENIED.

This constitutes the Decision and Order of the Court.

Dated: October 1, 2018
Bronx, New York

E N T E R:

A handwritten signature in black ink, appearing to be 'DMG', written over a horizontal line.

HON. DORIS M. GONZALEZ, J.S.C.