

Matter of Soto v City of New York

2019 NY Slip Op 33217(U)

October 28, 2019

Supreme Court, New York County

Docket Number: 159524/2019

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of
ESTATE OF ADAM JOSEPH SOTO,
By his Administratrix, Lucy Aguilar,

Petitioner,

Index No.
159524/2019

Decision and
Order

-against-

Mot. Seq. 001

For an Order pursuant to Sections 3102(c) and
3101(i) of the Civil Practice Law and Rules of
The State of New York, and all other applicable
Laws, statutes and regulations, permitting
Preservation, Discovery, Testing and Inspection
In an Action about to be commenced, from:

THE CITY OF NEW YORK,
THE NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSIT AUTHORITY,
and JOHN DOE #1, the operator of the subject subway,

Respondents.
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HON. EILEEN A. RAKOWER, J.S.C.

The Estate of Adam Joseph Soto (“Soto”), by his Administratrix Lucy
Agyuilar, (“Petitioner”) moves by Order to Show Cause pursuant to CPLR 3102(c)
and CPLR 3101(i) to permit Petitioner to obtain and inspect the following evidence:

- 1) Expert Inspection of 2029 M Train involved in the subject
incident in possession of the MTA, NYCTA and/or City
of New York that would leave to the ability to properly
form the Complaint;

- 2) Inspection of Personnel Records of the MTA, NYCTA and/or City of New York for the Date of the Incident, Relative to the M Train Operator, in possession of the MTA, NYCTA and/or City of New York that would lead to identify additional defendants;
- 3) All Still and Moving Visual Images in possession of the MTA, NYCTA and/or City of New York of the subject 2029 M Train Including the Moving Images Captured By Cameras on the Platform Where Incident Occurred; those Cameras in Tunnels and Stations en route to the Final Destination of 2029 M Train that would lead to proper identification of the parties and/or the proper parties;
- 4) All Radio, Digital, Computer, Audio, and Visual Images in possession of the MTA, NYCTA and/or City of New York for the Day the Alleged Incident Relative to the Location of the Accident that would lead to proper identification of the parties and/or ability to properly form the Complaint;
- 5) All Audio, Visual, Written, and Oral Recordings of Communications of the MTA, NYCTA or City of New York Regarding the Subject Incident that would lead to proper identification of the parties and/or the proper formulation of the complaint;
- 6) All Audio recordings and Written Transcriptions of 911, 311, and/or other Calls and/or Complaints Received Regarding the Subject Incident including, but not Limited to, the Complaint Reports, DD5s and Sprint Reports, including names and telephone numbers for all calls received relative to the incident, in possession of MTA, NYCTA and/or City of New York that would lead to proper identification of the parties and/or the proper formulation of the complaint;
- 7) All Audio recordings and Written Transcriptions of any Calls received by or made by responding officers, including, but not limited to Officer DeMartini Relative to the Subject Incident in possession of MTA, NYCTA

and/or City of New York that would lead to proper identification of the parties and/or the proper formulation of the complaint;

- 8) All Recordings and Documents of the MTA, NYCTA and/or City of New York Relating to the Investigation of The Subject Incident that would lead to proper identification of the parties and/or the formulation of the complaint;
- 9) All Documents Relating to any Conversations, Interviews or Statements Taken by any Employee of the MTA, NYCTA and/or City of New York in the Regular Course of Business for This Incident in possession of the MTA, NYCTA and/or City of New York that would lead to proper identification of the parties and/or the proper formulation of the complaint; and
- 10) All Documents Relating to any Conversations, Interviews or Statements Taken by any Employee of the MTA, NYCTA and/or City of New York with the Decedent Prior to His Death, or Plaintiff s Family, Subsequent to Decedent's Death, including, but not Limited to any Conversations of Detective DeMartini #29298 with Bellevue Hospital Personnel in possession of the MTA, NYCTA and/or City of New York that would lead to proper identification of the parties and/or the proper parties.

Background

On May 8, 2019, Soto was struck and killed by an M train. Petitioner states that she "is aware there is substantial physical, documentary and audio/videotaped evidence in connection with this accident in which petitioner's brother was struck and dragged by an 'M' subway train which resulted in serious personal injuries and his death, including the subway train itself." Petitioner states "[t]hat upon information and belief said physical, documentary and audio/videotaped evidence includes, but is not limited to, the name of witnesses to the subject incident; still and/or moving images of the decedent, ADAM JOSEPH SOTO; the name of the

conductors and engineer on the subject train at the time of the incident; blood splatter evidence; maintenance and repair records; alerts for the safe operation of the subject train, and other information related to the subject incident. Petitioner states that this information has not been disclosed despite due demand, and is within the sole custody and control of Respondent.”

Petitioner contends that the information sought is needed to identify all potential defendants and to frame a Complaint arising out of the subject incident.

The City of New York (“the City”) opposes Petitioner’s Order to Show Cause. The City argues that the application should be denied because “[t]he documents in question are unnecessary in order to properly frame a notice of claim or a complaint, and, if granted, would also happen to provide petitioner with documents, not limited in time, in an expedited manner that would be impossible for the City to comply with because of the vague and overbroad descriptions supplied by petitioners.” The City states, however, that it “is willing to preserve the documents to the extent they exist and are identifiable.”

New York City Transit Authority (s/h/a The New York City Transit Authority) and Metropolitan Transportation Authority (s/h/a Metropolitan Transit Authority) (collectively, “Transit”) also oppose Petitioner’s Order to Show Cause. Transit states that on July 18, 2019, it was served with a Notice of Claim which provides the information sufficient to frame a complaint. The Transit also states that the City and New York City Police Department have agreed to provide unredacted Sprint records and 911 recordings which contains information concerning the May 8, 2019 accident. Transit also contends that Petitioner seeks discovery that goes beyond the scope of pre-action discovery.

CPLR §3102(c) provides that “[b]efore an action is commenced, disclosure to aid in bringing an action ... [or] to preserve information ... may be obtained, but only by court order....” The First Department has noted that “while pre-action disclosure may be appropriate to preserve evidence or 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 Tr. Auth.*, 27 A.D.3d 265, 266 (1st Dept. 2006).

Here, Petitioner has not shown how the requested discovery is needed to identify potential defendants to warrant its pre-action disclosure. The City and Transit shall preserve the requested discovery, which shall be examined and produced in the course of discovery once the action is commenced.


Wherefore, it is hereby

ORDERED the Order to Show Cause for Pre-Action Discovery is denied; and it is further

ORDERED that Respondents The City of New York and New York City Transit Authority (s/h/a The New York City Transit Authority) and Metropolitan Transportation Authority (s/h/a Metropolitan Transit Authority) shall preserve all requested discovery.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: OCTOBER 24, 2019


Eileen A. Rakover, J.S.C.