

Feliciano v City of New York

2020 NY Slip Op 32303(U)

July 10, 2020

Supreme Court, New York County

Docket Number: 151870/2020

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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INDEX NO. 151870/2020

MADLINE FELICIANO, TEMPORARY GUARDIAN OF
NICHOLAS FELICIANO,

MOTION DATE N/A

Petitioner,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 7, 8, 9
were read on this motion to/for DISCOVERY - PRE-ACTION

Upon the foregoing documents, Petitioner's petition seeking pre-action discovery pursuant
to CPLR 3102(c) is as follows:

On February 20, 2020, Petitioner filed the instant petition, alleging as follows: Mr.
Feliciano's rights were allegedly violated when he was negligently permitted to attempt suicide in
his cell at Riker's Island on November 27, 2019. The New York Times reported that Mr.
Feliciano's suicide attempt was captured on a video feed monitored by officers and that for seven
minutes, guards looked in on Mr. Feliciano while he tried to hang himself but did not enter the
cell. The Times further reported that approximately a week prior, another inmate, Mr. Richards-
Bailey, had used the same hook in an attempt to hang himself in the same cell and that the
NYCDOC suspended five corrections officers and a captain for 30 days, who did not respond to
Mr. Feliciano.

Petitioner now seeks an Order for the production of the following:

- a. The full names of any NYCDOC employees who were suspended in connection with this
incident;

- b. The length of the suspension of employees identified in (a);
- c. Justification for returning the employees identified in (a) back to work on modified duty;
- d. The full names of any NYCDOC employees who were on duty at the intake area of George R. Vierno Center (“GRVC”) at approximately 11:30 pm on November 27, 2019;
- e. Any and all video recordings that capture Mr. Feliciano, particularly for the date of November 27, 2019
- f. Any and all video recordings that capture NYCDOC employees responding or not responding to Mr. Feliciano on November 27, 2019, particularly during the time surrounding his suicide attempt;
- g. Any and all documentation related to the suicide attempt of Angel Richards-Bailey on or around November 21, 2019, in the intake area of GRVC
- h. Any and all documents received from the New York State Department of Corrections Division of Parole or the New York City Department of Probation concerning Nicholas Feliciano.
- i. Any and all medical evaluations and intake documents for Nicholas Feliciano
- j. Any and all log book entries
- k. Any and all records maintained by NYCDOC on Mr. Feliciano.
- l. Any and all investigation records regarding the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life
- m. Any and all disciplinary files and records of NYCDOC personnel in connection with the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life.
- n. Any and all materials, media, documents, and/or electronically stored information connected with the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life that was not captured by the above-listed items.

As discussed in Uddin v. New York City Transit Auth., 27 A.D.3d 265, 266 (1st Dept. 2006),

“Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order” (CPLR 3102 [c]). Thus, 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 (*Matter of Gleich v Kissinger*, 111 AD2d 130, 131-132 [1985]). “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” (*Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [2000]). Here, petitioner's notice of claim already set forth the time, place and particulars of the accident. The only purpose of inspecting the file at this point would be to explore alternative theories of liability, which is not a proper basis for invoking CPLR 3102 (c) (*id.* at 347-348).

Here, Petitioner is demanding, as pre-suit discovery, functionally all of the written discovery that it would demand from the City of New York in a potential future action, a purpose which CPLR 3102 is not designed to allow. Petitioner's petition clearly shows that Petitioner is already in possession of the sufficient facts necessary to frame his complaint, except for the identities of the additional possible defendants in the form of the corrections officers and supervisors involved in allegedly not responding to petitioner's suicide attempt. As such, petitioner is entitled to pre-action discovery of “The full names of any NYCDOC employees who were suspended in connection with this incident.”

Respondents also object to Petitioner's lack of a guardianship order in their Order to Show Cause, however, same has been remedied in petitioner's reply papers.

Petitioner's petition is granted to the extent that Respondents are ORDERED to, within thirty days of service of a copy of this Order, together with Notice of Entry, disclose the identities of any NYC DOC employees who were suspended in connection with this incident, and it is further

ORDERED that respondents shall preserve all of the evidence demanded by Petitioner, to the extent that it exists, and said petition is denied in all other respects.

7/10/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

LAURENCE L. LOVE, J.S.C.