

Matter of Party Rental, Ltd. v Marriott Intl., Inc.

2020 NY Slip Op 32917(U)

September 3, 2020

Supreme Court, New York County

Docket Number: 159792/2019

Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER

Justice

PART 6

In the Matter of the Application of,

INDEX NO. 159792/2019

PARTY RENTAL, LTD, and MIGUEL ARCE,

Petitioners,

**MOTION DATE
MOTION SEQ. NO. 2
MOTION CAL. NO.**

For an Order pursuant to Section 3102(c) of the Civil Practice Law and Rules to Compel Disclosure from

- v -

MARRIOTT INTERNATIONAL, INC. d/b/a THE NEW YORK EDITION, and SL GREEN REALTY CORP.,

Respondent.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits

PAPERS NUMBERED

█
█
█
█

Cross-Motion: Yes X No

Petitioners Party Rental Ltd (“Party Rental”) and Miguel Arce (“Arce”) (collectively, “Petitioners”) move for an Order pursuant to CPLR 3102(c) directing Respondents Marriott International, Inc. d/b/a The New York Edition and SL Green Realty Corp. (“SL Green”) (collectively, “Respondents”) to preserve and immediately produce to Petitioners a copy of all surveillance video depicting the exterior of the premises located at 5 Madison Avenue, New York, NY, the lobby of the hotel located at said address, and the exterior of the premises located at 11 Madison Avenue from September 9, 2019, for the period of 12:00pm to 2:00pm.

Respondent Marriott International, Inc., incorrectly referred to as Marriott International, Inc. d/b/a The New York Edition (hereinafter “Marriott”), opposes the Petition. SL Green does not oppose the Petition. Petitioners’ previous application for the same relief was denied for failure to provide proof of service.

Petitioners state that on September 9, 2019, Arce “was in the course of his employment with PARTY RENTAL, LTD, and operating a truck in the vicinity of Respondent’s hotel located at 5 Madison Avenue, New York, NY, when he was involved in a contact with a bicycle parked in front of the hotel.” Petitioners state that SL Green operates a commercial building located at 11 Madison Avenue, New York, NY.

Petitioners state that their carrier received a letter advising that Aaou Diallo, the owner of the bicycle, claimed bodily injury. Petitioners state, “Upon information and belief, the Respondents maintain surveillance video cameras which depict both the lobby and exterior of the hotel in the vicinity of the claimed accident.” Petitioners state that they requested copies of the relevant surveillance videos from Respondents and that Respondents refused to produce them without a subpoena. Petitioners contend that their application is needed “to protect against destruction of the potentially relevant evidence contained within the surveillance videos.”

Marriott argues that “[t]here are no allegations within the petition that the respondents owned, operated, maintained, or controlled the truck and/or the bicycle nor is there any allegation that the purportedly injured person on the bicycle was in any way related to, in any fashion, MARRIOTT” or that Marriott “was involved in this motor vehicle accident, directly or indirectly.” Marriott contends:

Based on the petition and supporting documentation it appears that Petitioner believes that MARRIOTT’s surveillance security system may have incidentally captured the accident. However, the petition itself proceeds well beyond the call for the preservation of any video capturing the accident on September 9, 2019 at approximately 12:53 p.m. but rather calls for production of two hours of video of the interior lobby of the hotel, all exterior portions of the hotel which would include 5th Avenue and other portions of the hotel wholly unrelated to the accident occurring on East 24th street, as well as video of an unrelated property located at 11 Madison Avenue, believed to be a commercial building with no connection to MARRIOTT.

Marriott contends that “Petitioner is seeking information from a non-party, pre-action, [and] utilizing this particular CPLR section inappropriately and well beyond the scope of its application.”

CPLR § 3102(c) provides that “[b]efore 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.” 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). “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.” *Uddin*, 27 AD3d at 266.

Petitioners’ application for pre-action discovery is granted without opposition as against SL Green, and SL Green shall preserve and produce copies of all surveillance videos of the exterior of the premises located at 11 Madison Avenue from September 9, 2019, for the period of 12:00pm to 2:00pm within 20 days from the date of this Order.

Petitioners’ application is granted as against Marriott only to the extent that Marriott shall preserve and maintain copies of all surveillance videos of the lobby and exterior of The New York Edition Hotel located at 5 Madison Avenue, New York, NY recorded on September 9, 2019, between the hours of 12:00pm and 2:00pm. Petitioner’s request for Marriott to produce the videos is denied. Petitioners have not demonstrated a basis for Marriott to produce the videos under CPLR §3102(c).

Wherefore, it is hereby

ORDERED that the Petition is granted without opposition as against Respondent SL Green Realty Corp., and Respondent SL Green Realty Corp. shall preserve and produce copies of all surveillance videos of the exterior of the premises located at 11 Madison Avenue from September 9, 2019, for the period of 12:00pm to 2:00pm within 20 days from the date of this Order; and it is further

ORDERED that the Petition is granted as against Marriott International, Inc. d/b/a The New York Edition only to the extent that Marriott International, Inc.

d/b/a The New York Edition shall preserve and maintain copies of all surveillance videos of the lobby and exterior of The New York Edition Hotel located at 5 Madison Avenue, New York, NY recorded on September 9, 2019, between the hours of 12:00pm and 2:00pm.

Dated: SEPTEMBER 3, 2020

ENTER: 
_____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: **FINAL DISPOSITION**

NON-FINAL DISPOSITION