

**Monoky v City of New York**

2021 NY Slip Op 30323(U)

February 5, 2021

Supreme Court, New York County

Docket Number: 151690/2018

Judge: James E. d'Auguste

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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. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM**

*Justice*

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ANNE MONOKY, G. G., W. G., J. G., CURT GOLDMAN,

Plaintiff,

**INDEX NO. 151690/2018  
MOTION SEQ. NO. 004, 005, 006**

- v -

THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATION, CENTRAL  
PARK CONSERVANCY, INC., F.A. BARTLETT TREE  
EXPERT COMPANY, ALMSTEAD TREE & SHRUB CARE  
COMPANY, BEUCLER TREE EXPERTS, LLC

**DECISION + ORDER  
ON MOTION**

Defendants.

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Motion sequences 004, 005, and 006 are consolidated for disposition.

A conference on the motions, cross-motions, and other discovery issues having been held on February 4, 2021, the Court resolves the motions, cross-motions, and all other discovery issues to date as follows:

1. Within thirty (30) days of this order, plaintiff will provide defendants with the Forensic Examination Reports for the nine dates/pages of "sports related" social media identified by defendant Bartlett. These reports will be produced in their entirety, including pictures, although the following fields may be redacted: "Likers"; "Permanent Link"; and "Source." No other fields may be redacted.

The Court notes that these were public postings to social media that were viewable by the public, or at least a large portion thereof. Indeed, the sample provided to the Court was "liked" by 89 people. The Court does not find any of the other information contained therein to be invasive of privacy. Additionally, the scope of the herein ordered disclosures is very limited in scope.

In any event, the Court also orders that the social media disclosures contemplated in this order are deemed confidential and may be used solely for the purposes of this litigation.

2. Within thirty (30) days of this order, plaintiff will produce, to the extent not already provided, the Forensic Examination Reports for the dates/pages identified by the other defendants, in their entirety, including pictures, although the following fields may be redacted: “Likers”; “Permanent Link”; and “Source.” No other fields may be redacted.

3. Within forty-five (45) days of this order, plaintiff will provide the Court, for in camera review, unredacted Forensic Examination Reports related to any and all posts to Anne Monoky’s Facebook and Instagram accounts for the period September 1, 2019 through December 31, 2019. The Court shall determine to what extent, if any, the documents reviewed in camera shall be produced, and if produced, to what extent redacted, prior to disclosure to the defendants.

4. Within ten (15) days of this order, plaintiff will contact Dr. Mark Soulwedaine regarding defendant Bartlett's request for medical records and advise the Court if Dr. Soulwedaine intends to comply. In the event Dr. Soulwedaine continues to fail to comply with the authorized request for records, defendant Bartlett shall submit to the Court a proposed Subpoena Duces Tecum regarding the same.

5. Within fifteen (15) days of this order, plaintiff shall provide defendant Almstead with an authorization for records from Anne Monoky’s disability benefits carrier for the period 8/15/2017 through 8/15/2020, which shall be limited to: (a) medical records submitted in support of any claim(s), (b) medical records related to any examination conducted by or at the request of the disability carrier in relation to any such claims for benefits, (c) the date(s) of the commencement and termination of disability benefits, and (d) the reasons/grounds for the cessation of benefits. The Court denies the motion regarding any other documents or information from the disability

benefits carrier, including information regarding the dollar amount(s) of such benefits. Defendant Almstead will convey the request for documents along with the authorization within 7 days of receipt from plaintiff.

6. Within 30 days of this order, defendant Almstead will provide the other defendants and plaintiff any and all documents of any kind, including invoices and emails, related in any way to work performed by Almstead in Central Park, regardless of location within the Park, on October 22, 2008 and February 10, 2015. To the extent that there are no such documents, defendant Almstead shall produce a “Jackson affidavit,” which shall include a description of Almstead’s record retention policy or practice.

7. Within 30 days of this order, defendant Buecler will provide the other defendants and plaintiff any and all documents of any kind, including invoices or emails, related in any way to work performed by Buecler in Central Park, regardless of location within the Park, on October 22, 2008 and February 10, 2015. To the extent that there are no such documents, defendant Buecler shall produce a “Jackson affidavit,” which shall include a description of Buecler’s record retention policy or practice.

8. Plaintiff’s motion for sanctions against defendant Bartlett (motion sequence 006) is denied. Although certain motions for discovery by defendant Bartlett appear to have been premature, and although certain discovery requests by defendant Bartlett may have been denied, there has been sufficient good faith disputes regarding outstanding discovery to conclude that defendant Bartlett’s actions do not warrant sanctions. The Court cautions defendant Bartlett, however, to be mindful of discovery deadlines and proper good faith attempts at resolution of discovery disputes before engaging in motion practice regarding outstanding discovery.


9. All defendant EBTs shall be completed on or before April 30, 2021.

10. Note of Issue deadline extended to June 30, 2021.

11. A telephonic status conference shall be held with the Court on March 24, 2021 at 1:00 pm.

All other discovery and other relief requested in the motions and cross-motions are denied.

This constitutes the decision and order of the Court.

<u>2/5/2021</u>					
DATE			_____ JAMES EDWARD D'AUGUSTE, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE