

Collins v New York City Hous. Auth.
2021 NY Slip Op 30838(U)
March 17, 2021
Supreme Court, New York County
Docket Number: 158146/2012
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART IAS MOTION 7EFM

Justice

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INDEX NO. 158146/2012

LUCILLE COLLINS, AS THE ADMINISTRATRIX OF THE
ESTATE OF AARON COLLINS,

MOTION SEQ. NO. 004

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163

were read on this motion for DISCOVERY.

Law Offices of Jay H. Tanenbaum, New York, NY (Jay H. Tanenbaum of counsel), for plaintiff.
Leahey & Johnson, P.C., New York, NY (Christopher D. Clarke of counsel), for defendant.

Gerald Lebovits, J.:

In this wrongful-death action arising from a 2011 murder, plaintiff, Lucille Collins, seeks an order permitting plaintiff to obtain post-note-of-issue discovery and compelling defendant, the New York City Housing Authority, to provide her that discovery. The motion is denied.

BACKGROUND

Lucille Collins is the administrator of the estate of her son, Aaron Collins. In 2011, Collins was murdered in the stairwell of an apartment building owned by NYCHA. Plaintiff brought this action in 2012. In 2013, NYCHA brought a third-party action against several individuals who had been arrested for Aaron Collins's murder.

In March 2014, plaintiff served a demand on NYCHA seeking “[a]ny and all reports of documented felony offenses that occurred at this specific housing project two (2) years prior to the date of lo[ss],” and listing seven categories of offenses for which the reports were sought. (NYSCEF No. 143 at 2-3.) NYCHA timely objected to this discovery demand as overbroad and not calculated to lead to admissible evidence. (*See* NYSCEF No. 143 at 7.) Plaintiff did not move to compel NYCHA to respond to the felony-offenses demand.

At the same time, NYCHA moved to stay Collins's action pending the criminal prosecution of the third-party defendants.¹ (*See* NYSCEF No. 27.) In September 2014, the court (Wooten, J.) granted the motion.² (*See* NYSCEF No. 81.) The action remained stayed until April 2018. (*See* NYSCEF No. 88.)

The week after the stay was lifted, plaintiff served another set of document demands. These demands did not pertain to reports of felony offenses in the housing project where Aaron Collins was murdered. Instead, plaintiff sought “[a]ny and all reports, documents, relating to the investigation conducted by the “task force” created by NYCHA to investigate the monitoring systems in New York City Housing Developments.” (NYSCEF No. 99, at 2.) Plaintiff also sought “[a]ny and all reports, documents, and/or records in regards to investigation and implementation of the surveillance system in the Wilson Projects located at 435 East 105th Street, New York, New York.”³ (*Id.*) NYCHA timely objected to these demands as, among other things, not limited in scope or time. (*See* NYSCEF No. 100 at 6.) Plaintiff then served a version of the same demands that was limited to documents prepared “within 3 years prior to [the] incident and 1 year after.” (NYSCEF No. 89 at 1.) NYCHA did not respond to these narrowed demands.

In October 2019, plaintiff moved to compel a response to her security-cameras demands.⁴ (*See* NYSCEF Nos. 97, 98.) This motion did not, however, also seek to compel a response to the felony-offenses demand from 2014, or otherwise rely on or reference that demand. In January 2020, this court granted the security-cameras motion in part and denied in part. (*See* NYSCEF No. 112.) This court agreed with plaintiff that documents relating to the issue of installing cameras in the housing project were potentially relevant to her claims in the action; but the court also concluded that the demands, as drafted, were vague and overly broad. (*See id.* at 2.)

To enable plaintiff to serve more focused discovery demands relating to the issue of security cameras, this court directed NYCHA to provide plaintiff's counsel with a list of any NYCHA “reports, memoranda, or similar documents from December 1, 2008, to December 12, 2011” on “the general issue of whether (and to what extent) security cameras should be installed in NYCHA-owned apartment buildings,” on “whether to install security cameras in the Wilson Projects in particular,” and “on the implementation of any camera-installation plan in the Wilson Projects.” (*Id.* at 2-3.) This court's order also permitted Collins to serve supplemental document requests within 30 days of receiving NYCHA's list of documents (if any). (*See id.* at 3.)

¹ It is possible that plaintiff did not then move to compel due to NYCHA's filing its motion to stay. The record contains no information on that point.

² The action was later transferred to the undersigned.

³ It is undisputed that the building in which Aaron Collins was murdered lacked coverage by security cameras at the time of the murder.

⁴ Strictly speaking, plaintiff's motion papers referred only to the first security-camera demand, which had lacked any temporal limitation (*see* NYSCEF No. 97); that distinction, though, is not material here.

On April 30, 2020, NYCHA emailed plaintiff’s counsel several documents—not merely a list of documents—that NYCHA represented were responsive to its production obligation under this court’s January 2020 order.⁵ (*See* NYSCEF No. 155; *see also* NYSCEF No. 148 at ¶¶ 23-26 & n 1.) Plaintiff did not object to this production, indicate to NYCHA or the court that it was incomplete, or otherwise seek further discovery (whether on the issue of security cameras or otherwise). Instead, on May 28, 2020, plaintiff filed her note of issue and certificate of readiness for trial, indicating expressly that “[t]here are no outstanding requests for discovery” and that “[d]iscovery proceedings now known to be necessary [are] completed.” (NYSCEF No. 115 at 2.)

At the end of December 2020, NYCHA moved for summary judgment, returnable on February 4, 2021.⁶ (*See* NYSCEF No. 116.) On January 5, 2021, plaintiff notified this court that it had filed a request for so-ordering of two document subpoenas—one directed to the NYPD, one directed to NYCHA. Each subpoena sought information relating to crime analysis and statistics for 2010 and 2011 for NYCHA housing generally, and the project where Aaron Collins was murdered, in particular. (*See* NYSCEF Nos. 135, 136.) Given plaintiff’s filing of the note of issue, this court declined to so-order the subpoenas. (*See* NYSCEF No. 151.) Instead, this court permitted plaintiff to move to compel post-note discovery, as long as that motion was filed by plaintiff’s deadline to oppose summary judgment. (*See* NYSCEF Nos. 151, 152.) Plaintiff timely moves to compel. (*See* NYSCEF No. 137.)

DISCUSSION

A trial court has discretion to permit post-note-of-issue discovery where “unusual or unanticipated circumstances” develop after filing of the note of issue that warrant such discovery “to prevent substantial prejudice.” (*Prevost v One City Block LLC*, 155 AD3d 531, 537 [1st Dept 2017], quoting 22 NYCRR 202.21 [d] [affirming denial of motion to conduct post-note discovery].) This court concludes in its discretion that plaintiff has not shown post-note-of-issue discovery to be warranted here.

The discovery that plaintiff now seeks relates to crime statistics in NYCHA housing and in the particular housing project where Aaron Collins was murdered. Plaintiff first sought a version of this discovery in 2014 (*see* NYSCEF No. 143)—thereby indicating that plaintiff was aware years ago of the potential relevance to NYCHA’s liability of the incidence of crime in NYCHA buildings and projects.⁷ And although NYCHA objected to plaintiff’s initial demand

⁵ NYCHA’s production apparently was delayed by, among other things, pandemic-related disruptions. (*See* NYSCEF No. 148 at ¶ 24.)

⁶ Although this motion was filed more than 60 days after plaintiff’s note of issue, it was timely under Governor Cuomo’s various executive orders suspending deadlines imposed by statute, regulation, or court rule.

⁷ Indeed, plaintiff’s own papers on the current motion suggest it has been settled law in the First Department since at least 2008 that such information would go to foreseeability, and thus potentially to a landlord’s tort duty. (*See* NYSCEF No. 138 at ¶¶ 10-11.) Although this court need not address here the merits of plaintiff’s suggestion, at a minimum the existence of appellate precedent on the issue predating this action further indicates that plaintiff was on notice long before the note of issue that she might wish to obtain such discovery.

for such information as overbroad, plaintiff never expressed dissatisfaction with NYCHA's objection, much less moved to compel a response to her felony-offenses demand.

Indeed, when the stay in this case was lifted, plaintiff sought other discovery going to whether NYCHA breached a duty in tort to Aaron Collins—namely reports and other documents on whether to install security cameras in NYCHA buildings and the subject housing project in particular. And this court granted plaintiff's motion to compel further discovery from NYCHA relating to security cameras. Yet in the four months between this court's issuing an order on the motion to compel and plaintiff's filing of the note of issue, plaintiff did not make any further attempt to obtain discovery relating to crime reporting or statistics. (*See Aikanat v Spruce Assoc., L.P.*, 182 AD3d 437, 337 [1st Dept 2020] [affirming denial of request for post-note discovery where defendants could have, but did not, seek that discovery well before filing the note of issue].)

Plaintiff now argues that the 2018 security-cameras document demand was in fact aimed at obtaining “crime statistics supporting the authorization for cameras.” (NYSCEF No. 138 at ¶ 13.) And she argues that the documents NYCHA emailed to plaintiff in April 2020 “expressly note[] reliance on crime data and police reports to warrant the installation of security cameras,” assertedly showing again that such statistics are material to plaintiff's opposition. (NYSCEF No. 159 at ¶ 15.) But these arguments only underscore that plaintiff was fully on notice months or years before she filed her note of issue of the relevance and significance of discovery on the issue of crime in NYCHA buildings—and thus that the need for discovery on that issue was neither “unusual” nor “unanticipated” at the time she filed the note.⁸ (*See Prevost*, 155 AD3d at 537 [affirming denial of request for post-note-of-issue-discovery when defendant “had ample notice” of the issue on which it sought discovery “far in advance of the note of issue].)

Plaintiff also contends that the filing of the note of issue should be disregarded for present purposes (or at least vacated) because the filing was inadvertent—a bureaucratic oversight during the height of COVID-19-related disruptions. It is not entirely clear to the court why the affirmative choice to prepare, sign, and file a note of issue should be treated as an inadvertent oversight. But regardless, *seven months* elapsed between filing of the note of issue on May 28, 2020, and filing of NYCHA's summary-judgment motion on December 30, 2020. Plaintiff did not attempt in that period to withdraw the note of issue or, for that matter, to seek post-note discovery. It was only *after* NYCHA moved for summary judgment that plaintiff for

⁸ Plaintiff's counsel suggests, both on reply in support of this motion, and in prior email correspondence with the court and NYCHA, that plaintiff only became aware of (and was able to retrieve) NYCHA's April 2020 document production in February 2021. (*See* NYSCEF No. 159 at ¶ 15.) But the record reflects that NYCHA properly emailed that production to the listed service email address for plaintiff's counsel (an address that counsel has actively used throughout). Moreover, NYCHA also has submitted an email chain that appears on its face to indicate that plaintiff's counsel received at the time—and responded to—the cover email attaching NYCHA's supplemental production. (*See* NYSCEF Nos. 155, 156.)


the first time sought additional discovery to support her effort to rebut arguments made in NYCHA's summary-judgment papers.⁹

In short: plaintiff's need for the discovery she now seeks was not unanticipated, was not unusual, and did not arise after the note of issue was filed. Plaintiff had a full opportunity to seek that discovery months—years—before she filed her note of issue, yet did not do so even while engaging in motion practice to obtain related information. And once plaintiff had filed her note of issue, she made no attempt to obtain post-note-of-issue discovery until after her adversary moved for summary judgment. In these circumstances, this court declines in its discretion to permit plaintiff to obtain post-note discovery (or to compel NYCHA and the NYPD to provide it).

Accordingly, for the foregoing reasons it is hereby

ORDERED that plaintiff's motion to permit and compel post-note-of-issue discovery (mot seq 004) is denied; and it is further

ORDERED that plaintiff shall file its opposition to NYCHA's summary-judgment motion (mot seq 003) on or before April 16, 2021; and that NYCHA shall file its reply papers (if any) in support of summary judgment on or before April 30, 2021.

<u>3/17/2021</u> DATE					 HON. GERALD LEBOVITZ J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input 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

⁹ Even then, plaintiff neither sought to withdraw the note of issue nor formally moved for leave to conduct and compel post-note discovery. Instead, she merely asked this court to so-order two subpoenas and thereby, in effect, grant her post-note discovery without her having to request it in so many words.