

**Matter of Hoyt Transp. Corp. v Attorney General of  
the State of N.Y.**

2022 NY Slip Op 30583(U)

February 23, 2022

Supreme Court, New York County

Docket Number: Index No. 150955/2021

Judge: Arlene Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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INDEX NO. 150955/2021

IN THE MATTER OF THE APPLICATION OF HOYT
TRANSPORTATION CORP.,

MOTION DATE 02/22/2022

Petitioner,

MOTION SEQ. NO. 001

- v -

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

DECISION + ORDER,
JUDGMENT ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 25, 27, 28, 29,
30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for QUASH SUBPOENA & CROSS-MOTION

The petition to inter alia quash the December 10, 2018 subpoena and to preclude
respondent from demanding any further discovery is denied. The cross-motion by respondent to
compel is granted in part.

Background

In this special proceeding<sup>1</sup>, petitioner seeks to effectively halt an investigation by
respondent into its operation of school buses pursuant to a contract with city schools.
Respondent alleges that petitioner (who provides school bus transportation to children with
special needs) has routinely permitted its buses to idle for excessive time periods, which violates
numerous regulations and constitutes a danger to the public.

<sup>1</sup> The Court recognizes that this proceeding was commenced in January 2021 but was only assigned to the
undersigned on February 14, 2022. Nevertheless, the Court apologizes for the delay particularly in light of the fact
that this is a special proceeding.

Respondent issued a subpoena to petitioner on December 10, 2018 and later a subpoena ad testificandum on August 2, 2019. Petitioner claims that it has responded to both subpoenas and has responded with more than 6,000 pages of documents on March 8, 2019. It later served supplemental objections and responses on July 3, 2019. A deposition of one of petitioner's shareholders took place on September 12, 2019. Petitioner contends it sent over another 300 documents in November 2019.

It maintains that it assumed the investigation was over when it did not hear from respondent until August 2020. Apparently, respondent then insisted the investigation was delayed due to the pandemic. When respondent asked for more documents in December 2020, petitioner requested, and respondent agreed to give petitioner, an extension of time to respond to February 8, 2021. However, the instant petition was filed on January 28, 2021.

In opposition and in support of the cross-motion to compel, respondent points out that it has credible evidence that the buses operated by petitioner idle in excess of legal limits and that preliminary data from fall 2019 shows this happened tens of thousands of times. Respondent also maintains that at the single deposition it held with petitioner, petitioner's witness could not identify any effort to limit these violations.

It argues that petitioner failed to meet its obligation to meet and confer before bringing the instant action. Respondent maintains that petitioner misunderstands the most recent request concerning Geotab data (GPS technology that allegedly provides information about idling). It emphasizes it did not seek the Geotab data itself but rather information about the systems that collected this data, and any reports or reviews generated from the data.

Respondent contends it has the authority to conduct a thorough investigation especially where it has evidence of in-person observations of the idling buses, multiple citations from law

enforcement against petitioner for idling and Geotab data showing tens of thousands of separate instances of idling for longer than five minutes from September 5, 2019 to December 31, 2019.

In reply, petitioner argues that respondent admitted that it had responded to the subpoena. Petitioner insists it has acted in good faith and that there is no requirement to meet and confer when it is being harassed. It characterizes the instant investigation as a fishing expedition and questions why respondent has not provided the underlying data it references in the opposition papers. Petitioner claims it does not matter that other bus companies may be cooperating and wants this Court to end the instant investigation.

Petitioner argues that, contrary to respondent's argument, it does not seek a writ of prohibition and that respondent is free to commence an actual action against petitioner. It merely wants that next step to take place instead of the current status quo.

### **Discussion**

“An application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry. The person challenging a subpoena bears the burden of demonstrating a lack of authority, relevancy or factual basis for its issuance” (*Matter of Hogan v Cuomo*, 67 AD3d 1144, 1145, 888 NYS2d 665 [3d Dept 2009]). “Executive Law § 63(12) expressly authorizes respondent to issue subpoenas in the course of an investigation into repeated fraudulent or illegal acts” (*id.*).

The Court denies the petition and grants the cross-petition/motion to compel. As an initial matter, the Court recognizes petitioner's frustration. It wants the investigation to end and feels it has done enough. But that is not a basis for this Court to tell respondent it cannot continue to pursue the current investigation. The timeline of this investigation does not suggest

it constitutes harassment or a fishing expedition. Although the original subpoena was issued in December 2018, petitioner did not respond until March 2019. Follow up demands and responses stretched the inquiry into early 2020 with a single deposition in September 2019. In other words, this is not a situation where respondent is clearly dragging the investigation along and the Court is concerned about harassment. To be clear, the Court is not assigning blame; it is merely observing that neither party moved that quickly.

The Court also cannot ignore the fact that the pandemic clearly delayed respondent's efforts to investigate. Although certain legal work might be conducive to remote work, conducting an investigation involving document review and depositions is necessarily delayed by a highly contagious virus. Moreover, it seems that respondent was more than willing to give petitioner more time to respond to the latest request about the Geotab information. Instead of responding, petitioner brought the instant petition.

Also important is the scope of the investigation. Petitioner has produced around 6,600 pages of documents and a single witness for a deposition. This is not a situation, such as the one identified by petitioner in its moving papers concerning respondent's investigation into Exxon Mobil, where there were millions of documents produced and many depositions held (NYSCEF Doc. No. 20 at 7).

The Court is not concerned with whether petitioner held the requisite meet and confer. Petitioner has demonstrated a willingness to cooperate and has submitted requested documents. It was entitled to bring the instant proceeding despite the fact that it apparently asked for an extension to respond to the December 2020 request and instead brought this petition.

The larger point is that respondent has broad authority to investigate illegal acts as long as it has identified "an adequate factual predicate" for this investigation (*Matter of Roemer v*

*Cuomo*, 67 AD3d 1169, 1170-71, 888 NYS2d 669 [3d Dept 2009]). Respondent submitted an affidavit from Anushua Choudhury, a data analyst, who explains that a preliminary analysis revealed that petitioner's buses idled for *over 30 minutes* on thousands of occasions (NYSCEF Doc. No. 30, ¶ 10[c]). The applicable regulations prohibit idling for more than one minute (*id.*).

This Court declines to effectively end an investigation given the facts alleged by respondent. Petitioner's drivers are purportedly idling its school buses far in excess of the applicable rules on a daily basis. Over just a few months (September 5, 2019 to December 31, 2019), petitioner allegedly permitted its buses to idle for more than five minutes on tens of thousands of instances. It is axiomatic that respondent would want to investigate; this is not an isolated incident or even an isolated series of events. And, as detailed by respondent, idling poses significant risks both for the environment and for the health and safety of New York residents. Respondent is entitled to investigate such a serious and important matter.

Moreover, as respondent points out, the most recent request from December 2020 only seeks information about the Geotab systems; it claims it does not want the actual data itself in this request. That is not, as petitioner insists, an overbroad request or a fishing expedition. Petitioner must comply with this latest request on or before April 6, 2022.

### **Summary**

Although the Court denies the petition and grants the relief by respondent, the Court observes that the instant decision should not be viewed as a blank check for respondent to continue this investigation indefinitely. If respondent allegedly has information that shows petitioner's buses are illegally idling tens of thousands of times, then the Court questions why respondent has not yet brought the appropriate action to stop it. Investigations cannot go on

forever and nothing in this decision prevents petitioner from bringing a similar application in the future.

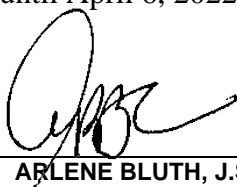
This decision merely recognizes that respondent has a legitimate basis for its investigation, its requests are rational and reasonable and the Court is satisfied that the investigation thus far does not constitute harassment. While the Court wishes respondent would act with more alacrity, the fact is that petitioner has not exactly moved quickly itself and there is no doubt the pandemic hindered respondent's efforts.

Accordingly, it is hereby

ADJUDGED that the petition is denied in its entirety; and it is further

ORDERED that the cross-motion by respondent to compel petitioner to comply with the December 14, 2020 demand for all communications regarding the installation or operation of the Geotab system in school buses operated by petitioner and for all agreements, including contracts, about the Geotab system is granted to the extent that petition has until April 6, 2022 to respond.

2/23/2022  
DATE

  
ARLENE BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE