

McCurrie v City of New York
2022 NY Slip Op 30815(U)
March 10, 2022
Supreme Court, New York County
Docket Number: Index No. 150453/2022
Judge: Leslie Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY****PRESENT: HON. LESLIE STROTH****PART****52***Justice*

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DENISE MCCURRIE,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY ANIMAL CARE
CENTER A/K/A NEW YORK CITY ANIMAL CARE AND
CONTROL, XYZ RESCUE ORGANIZATION, JANE DOE

Defendant.

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INDEX NO. 150453/2022**MOTION DATE** 3/10/22**MOTION SEQ. NO.** 001**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

SEIZURE/REPLEVIN

This case involves an alleged improper transfer of plaintiff's dog, Roscoe, from defendant Animal Care Center (ACC) to an unknown animal rescue organization, sued herein as "XYZ Rescue Organization" (XYZ). Plaintiff moves by order to show cause to compel ACC to disclose and provide the name of XYZ.

Plaintiff suffers from anxiety and depression and "live[s] on disability." (Plaintiff's Reply, McCurrie second aff at ¶ 11). On April 16, 2021, plaintiff experienced a medical emergency at her residence, requiring the services of an ambulance. Two Emergency Medical Technicians (EMTs) and two police officers arrived at plaintiff's home. Plaintiff was transferred by ambulance to a hospital, and the police officers took her dog Roscoe to ACC. Plaintiff alleges that she made the police officers aware that Roscoe is an emotional support animal. (*See Order to Show Cause*, McCurrie aff at ¶ 4).

A few days after the incident, plaintiff contacted the police to inquire as to Roscoe's whereabouts. Plaintiff was informed that Roscoe was given to ACC, which she contacted to

inquire about her dog. She was informed by ACC that Roscoe was given to a shelter, XYZ, but ACC would not provide the name of XYZ to Plaintiff. Subsequently, an individual, sued herein as “Jane Doe,” applied for and adopted Roscoe from XYZ. Plaintiff diligently sought to recover Roscoe, and she brought this instant action upon obtaining counsel.

The parties appeared for argument on March 10, 2022. Without prior leave of the Court, plaintiff filed a reply, and defendant filed a sur-reply. Upon the agreement of the parties, the Court is only considering those portions of plaintiff’s reply regarding urgency and custody and control, as well as the plaintiff’s supplemental affidavit. Plaintiff agreed to withdraw the remainder of her reply, and ACC withdrew its sur-reply.

Plaintiff maintains that the purpose of this order to show cause is to obtain the name of XYZ in order to substitute the name of the proper party for “XYZ,” as well as to attempt to obtain the ultimate relief of finding Roscoe. Plaintiff argues that ACC violated Agriculture and Markets Law (AML) § 117 by failing to hold Roscoe for the prescribed amount of time for either an identified or an unidentified dog, prior to placing him with a third-party animal rescue which ultimately offered him for adoption. Plaintiff also points out that ACC’s records show that ACC was on notice that Roscoe was an identified dog and knew the address of said dog’s owner. According to plaintiff, ACC made no effort to contact the police or plaintiff prior to transferring Roscoe to XYZ. Plaintiff contends that, based on ACC’s violation of the AML, which resulted in serious emotional harm to plaintiff, a disabled person, ACC must turn over the name of XYZ.

ACC opposes, arguing, *inter alia*, that plaintiff’s order to show cause does not present an emergency and that the order to show cause is duplicative of the complaint. The Court rejects these arguments. Plaintiff’s order to show cause presents an emergency, in that plaintiff seeks to recover information about her medically necessary emotional support animal. Although ACC

asserts that Roscoe was in poor health at the time of plaintiff's hospitalization, an allegation of poor health did not allow for an impermissible seizure without due process or negate the exigent nature of Roscoe's return. Moreover, the order to show cause is not duplicative of the complaint, because it seeks the specified information of the name of XYZ, not the ultimate relief of the return of Roscoe. ACC acknowledges that it is no longer in possession of Roscoe and that Roscoe has been adopted out by XYZ.

ACC also argues that it held Roscoe for the mandatory amount of time pursuant to AML prior to adoption and that providing the information requested runs contrary to public policy. ACC's Chief Executive Officer Risa Weinstock attests that, "it is ACC's policy not to disclose the identity of individual adopters and partner rescue organizations in order to ensure and support the secure rescue of at-risk animals, promote the adoption of animals from rescue shelters, and to otherwise ensure that adoptive placements are not put in jeopardy." (Weinstock affirmation in opposition at ¶ 13). ACC cites to two cases to support its argument that it is against public policy to allow disclosure of the name of XYZ, but they are non-binding and distinguishable. The only appellate case to which ACC cites, *Feger v Warwick Animal Shelter*, 59 AD3d 68 (2d Dept 2008), involves the disclosure of the identities of the donor and adoptive owner of the cat at issue. Here, plaintiff seeks the name of the rescue organization, not the name of the adoptive owner.

The specific facts of this case mandate disclosure of the name of XYZ, and no statute or other authority dictates that such information should not or shall not be provided as a matter of permissible disclosure. In this case, an emotional support animal apparently was permanently removed from the possession of a disabled individual without any attempts on the part of ACC to learn the identity of the owner or notify her of her pet's location. Despite plaintiff's many

documented attempts to get such information, ACC also failed to provide information as to the process by which she could attempt to retrieve Roscoe. In fact, the cases cited by ACC involve a pet owners' inattention to their pets, resulting in rescue and adoption. *See Stoddard v VanZandt*, 40 Misc 3d 1213(A) (Rensselaer County, Sup Ct 2013); *Feger v Warwick Animal Shelter*, 59 AD3d 68 (2d Dept 2008). Plaintiff made numerous attempts to retrieve Roscoe, who was taken as a result of a medical emergency. Notably, as conceded by ACC, plaintiff attempted to locate Roscoe while she was in the hospital.

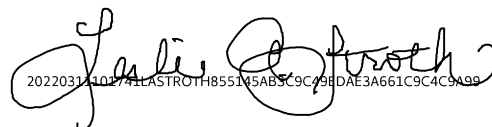
For the foregoing reasons, plaintiff must be provided the information requested as to the shelter where ACC sent Roscoe.

Accordingly, it is

ORDERED that plaintiff's order to show cause is granted; and it is further

ORDERED that defendant Animal Care Center (ACC) shall produce to plaintiff on or before March 17, 2022, the name of the animal rescue organization that took possession of and transferred retention of plaintiff's dog Roscoe.

The foregoing constitutes the Decision and Order of the Court.


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3/10/2022

DATE

LESLIE STROTH, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: