

Matter of Soto v City of New York

2022 NY Slip Op 31194(U)

April 11, 2022

Supreme Court, New York County

Docket Number: Index No. 151712/2022

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

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IN THE MATTER OF THE CLAIM OF LUIS SOTO,

INDEX NO. 151712/2022

Petitioner,

MOTION DATE 02/25/2022

- v -

MOTION SEQ. NO. 001

THE CITY OF NEW YORK, METROPOLITAN
TRANSPORTATION AUTHORITY, NEW YORK CITY
TRANSIT AUTHORITY

**DECISION + ORDER ON
MOTION**

Respondent.

-----X

HON. DENISE DOMINGUEZ:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for DISCOVERY - PRE-ACTION

Upon the foregoing documents, and virtual oral arguments heard on March 29, 2022, Petitioner’s leave for early disclosure pursuant to CPLR 3102 [c] is denied in part and granted to the extent that Respondents are directed to preserve pre-action discovery.

Background

Petitioner Luis Soto (hereinafter Petitioner), by his attorney, moves by order to show cause for a special proceeding for pre-action disclosure from Respondents, The City of New York (hereinafter City Respondents), Metropolitan Transportation Authority and New York City Transit Authority (hereinafter Transit Respondents). Petitioner alleges that on September 17, 2021, there was a sticky, wet, and or slippery substance on the subway platform floor causing him to slip and fall and sustain injuries. Petitioner specifically seeks any video footage of the alleged accident, video footage of the area twenty-four (24) hours prior to the accident, and incident and accident reports. In addition, Petitioner seeks video footage prior to the General Municipal Law Section 50-h hearing (hereinafter 50-h hearing).

Discussion

CPLR 3102 [c] allows a party to petition the court for pre-action discovery. Under CPLR 3102[c] a party before commencing an action, by court order, may seek disclosure to aid in bringing the action, to preserve information or to aid in arbitration.

The party seeking the pre-action discovery has the burden of establishing facts that “fairly indicate” a meritorious cause of action and that the discovery sought is material and necessary to prepare accurate pleadings (*Emmrich v Technology for Information Management, Inc.*, 91 AD2d 777 [3rd Dept 1982], *see Liberty Imports v Bourguet*, 146 AD2d 535 [1st Dept 1989], *Bliss v. Jaffin*, 176 AD2d 106 [1st Dept. 1991], *Holzman v. Manhattan and the Bronx Surface Transit Operating Authority*, 271 AD2d 346 [1st Dept 2000], *Uddin v New York City Transit Authority*, 27 AD3d 265 [1st Dept 2006], *White v New York City Transit Authority*, 198 AD3d 557 [1st Dept 2021]). However, a petitioner is not entitled to pre-action discovery for the purpose of exploring whether she or he has a cause of action or has alternative theories of liability (*Holzman*, 271 AD2d 346, *Uddin*, 27 AD3d 265, *White*, 198 AD3d 557).

Here, Petitioner alleges the following facts. On September 17, 2021, at approximately 1:30 p.m., at the end of the uptown subway platform at the 125th Street subway station for the A, B, C, and D subway lines in New York County, Petitioner while walking on the subway platform slipped and fell on a sticky, wet and or slippery substance causing injuries to his neck, back, knees and shoulders. Plaintiff further alleges that the accident occurred because Respondents were careless, reckless, and negligent in their ownership, operation, maintenance, repair, construction, renovation and control of the premises.

Petitioner argues that he has a meritorious negligence cause of action against Respondents. He further argues that receiving video footage prior to a 50-h hearing is necessary and material

because it will likely contain information critical in framing the complaint specifically how long the sticky, wet, and or slippery substance was on the subway platform.

In opposition, Transit Respondents argue that Petitioner is in possession of everything he needs to frame a complaint against Respondents, that control, manage, and or otherwise are responsible for the operation of the subway platform. Transit Respondents further argue that the request for video footage prior to a 50-h hearing is improper because the discovery provisions of the Civil Practice Law and Rules do not apply to 50-h hearings.

City Respondent also oppose Petitioner's request in that Petitioner cannot establish a meritorious claim against City Respondent as out-of-possession landlord of the subway system. City Respondent further argue that Petitioner's request for video coverage before the 50-hearing is improper and relies primarily on non-binding legal authority.

Upon review, this Court finds that Petitioner possess sufficient facts to frame a complaint for a negligence cause of action against Respondents (*see Merino v. New York City Transit Authority*, 218 AD2d 451 [1st Dept 1996] stating that for a negligence action, a plaintiff needs to show (1) the existence of a duty on defendant's part to plaintiff; (2) a breach of this duty; and (3) that such breach was a substantial cause of the resulting injury, *see e.g. In're Gleich v. C. Samuel Kissinger*, 111 AD2d 130 [1st Dept 1985]).

Here, Petitioner knows the date, time, and exact location of the alleged accident (*Holzman*, 271 AD2d 346, *Uddin*, 27 AD3d 265, *White*, 198 AD3d 557). Petitioner also knows the municipal entities likely involved, how the alleged accident happened, and what caused Petitioner to allegedly fall (*see id.*).

However, Petitioner does not establish that the pre-action discovery sought is material and necessary to prepare accurate pleadings (*see Emmrich*, 91 AD2d 777). Plaintiff's argument

that video footage would show how long the sticky substance was on the platform ground is insufficient. Nor is this Court persuaded by Plaintiff's reliance on *Matter of Barillaro v. City of New York*, 53 Misc.3d 307[Sup Ct. Bronx County, 2016) that receiving video footage before the 50-h hearing here is necessary to level the field among the parties, assist Petitioner in framing his future pleadings, or identify necessary parties. Accordingly, Petitioner's request for pre-action discovery is denied.

In the interest of justice, Respondents are directed to preserve any and all video footage that exists and is within Respondents' control of the vicinity of the 125th Street Uptown subway platform of the A, B, C and D subway lines in New York, NY, for September 16, 2021 and September 17, 2021 and any and all accident and incident reports that exit in relation to this accident (*see White*, 198 AD3d 557).


This constitutes the decision and order of this Court.

4/11/2022
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


HON. DENISE M. DOMINGUEZ
J.S.C.