

<b>Matter of 48th St. Holding LLC v La Rocca Mgt. LLC</b>
2022 NY Slip Op 31822(U)
June 8, 2022
Supreme Court, New York County
Docket Number: Index No. 656406/2022
Judge: Arlene Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE BLUTH PART 14**

*Justice*

-----X

**INDEX NO. 656406/2022**

IN THE MATTER OF THE APPLICATION OF

**MOTION DATE N/A**

48TH STREET HOLDING LLC

**MOTION SEQ. NO. 001**

Petitioner,

- v -

FOR AN ORDER TO COMPEL THE PRODUCTION OF  
DOCUMENTS FROM

**DECISION + ORDER ON  
MOTION**

LA ROCCA MANAGEMENT LLC,

PURSUANT TO CPLR 3102(C),

Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 7, 8, 9, 10  
were read on this motion to/for PRE-ACTION DISCLOSURE.

The petition for pre-action disclosure is denied.

**Background**

Petitioner seeks an order permitting it to issue subpoenas to respondent relating to various documents about a construction project at a property it partially owns in Manhattan. Petitioner contends it owns 21.33% of the property. It claims that the books and records available to it show that respondent was paid \$200,000 for renovations of 15 apartments at the property in 2021 but insists that the work did not take place. Petitioner maintains that no permits were ever issued related to apartment for renovations during that time period.

Petitioner contends that respondent has unique knowledge as to whether it performed renovations for 15 apartments in the property in 2021 and has records showing whether or not

the management company, the “Owning Entity and/or its Managing Member was involved in a scheme to improperly siphon money from the company” (NYSCEF Doc. No. 1, ¶ 12). It also points out that it wants information about additional apartment renovations in the building from 2018 through 2020 and maintains that there are no records to back up that this work was completed.

In opposition, respondent contends that this petition is part of an ongoing attack by a son against his father (who apparently has a controlling interest in the property at issue). It observes that the instant proceeding is one of three pre-action proceedings brought by Richard Obeshalom against his father and his father’s management company. Respondent contends that the petition should be denied because discovery under CPLR 3102(c) is a limited disclosure device and not a way to explore whether a cause of action exists. It concludes that petitioner has sufficient knowledge of the parties and entities involved to bring a formal plenary action should he choose to do so.

### **Discussion**

“Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. Thus, while pre-action disclosure may be appropriate to preserve evidence or to identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing. A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong” (*Uddin v New York City Tr. Auth.*, 27 AD3d 265, 266, 810 NYS2d 198 [1st Dept 2006] [internal quotations and citations omitted]).

On this record, the Court finds that petitioner has not met its burden to justify pre-action disclosure. This is not a situation where petitioner is unaware of the identities of the parties it may want to sue. Curiously, the petition defines the “Owning Entity” as 48<sup>th</sup> Street Holding LLC which is, of course, the petitioner itself. In other words, unlike a typical petition for pre-action disclosure where a party might seek the name of a particular entity it might want to sue, petitioner has in-depth knowledge about all the parties at issue here. Moreover, petitioner does not ask for information to be preserved. Instead, petitioner appears to want information so that it can determine what happened at the property and whether the renovations were actually completed. That is not a proper justification for pre-action disclosure.

As mentioned above, this type of proceeding may not be used to determine whether petitioner might have a cause of action it wants to pursue. The requested information that petitioner seeks is not limited in scope to aid petitioner in bringing a plenary action. “Pre-action discovery is not permissible as a fishing expedition to ascertain whether a cause of action exists and is only available where a petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong” (*Bishop v Stevenson Commons Assocs., L.P.*, 74 AD3d 640, 641, 905 NYS2d 29 [1st Dept 2010] [internal quotations and citations omitted]). Petitioner has all the information it needs to bring a case—it knows the identities of the parties and has a general theory of the purported wrong (that there was some scheme to pay respondent for work it either did not perform or performed without proper permits).

The disclosure that petitioner seeks is more akin to a common discovery demand in a plenary action. It is not appropriate for a petition brought pursuant to CPLR 3102(c). The Court takes no position on the purported feud between father and son that may, or may not, be the

driving force behind this petition. The instant decision is based solely on the fact that petitioner has not met its burden to seek the pre-action disclosure it wants.

Accordingly, it is hereby

ORDERED that the petition for pre-action disclosure is denied, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

6/8/2022  
DATE

  
ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE