

Villani v Rite Aid of N.Y., Inc.

2022 NY Slip Op 32949(U)

September 2, 2022

Supreme Court, New York County

Docket Number: Index No. 155613/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

JOANNA VILLANI

Petitioner,

- v -

RITE AID OF NEW YORK, INC.,

Respondent.

-----X

INDEX NO. 155613/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

The petition for pre-action disclosure is denied. ¹

Background

Petitioner seeks disclosure of in-store surveillance video from an October 22, 2021 accident. She claims she suffered severe facial and eye injuries when she collapsed and struck her head in the pharmacy area of a Rite Aid pharmacy located in Manhattan. Petitioner argues that after receiving the COVID-19 booster at the Rite Aid, she asked to sit down in the vaccination room but was told that the pharmacy was too busy.

According to petitioner, she has a history of vasovagal (fainting) episodes when she receives any injection, gives blood, or receives an IV. After receiving the booster, she claims she sat down in an “alcove area.” Then, petitioner alleges that she started to feel faint and tried to call

¹ The Court apologizes for the delay in issuing this decision. Due to a clerical error, the proceeding was never assigned a motion sequence number and so it never appeared on this part’s motion calendar.

for help. When no one responded, she stood up and then passed out and hit her head and face on the pharmacy counter. Petitioner claims she found out that the pharmacy has video surveillance and wants this video to aid her in framing her complaint.

In opposition, respondent contends that the instant request is not appropriate for a petition brought under CPLR 3012(c). It observes that the petition lays out more than enough facts for a complaint as petitioner described the time, date, and location of the incident.

In reply, petitioner insists that the surveillance video is material and necessary in order for her to frame a complaint. She claims that the staff present at the time of the incident might be responsible for petitioner's injuries and the video will allegedly aid in identifying how many employees were present at the pharmacy.

Discussion

“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. Generally, the determination of whether a party has demonstrated merit lies in the sound discretion of the trial court” (*Bishop v Stevenson Commons Assocs., L.P.*, 74 AD3d 640, 641, 905 NYS2d 29 [1st Dept 2010] [internal quotations and citations omitted]). Moreover, pre-action discovery is not appropriate where the “petitioner has sufficient information to frame his complaint” (*Holzman v Manhattan and Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347, 707 NYS2d 159 [1st Dept 2000] [noting that petitioner could identify the defendants as well as the time and place of the accident]).


The Court denies the petition. In this Court's view, petitioner has all the information required to form a complaint. She knows when the incident happened, where it happened and the events immediately preceding the incident. Petitioner knows the defendant she would likely name in a future personal injury lawsuit and, critically, petitioner even predicts that she would pursue a negligence claim against defendant. The request for the disclosure of surveillance video is an ordinary and routine discovery demand more appropriate for a plenary action. It might, of course, warrant sending a preservation letter to respondent to preserve the video footage. But the purpose of pre-action disclosure is to assist a potential plaintiff with identifying the specific causes of action she might pursue or with identifying potential defendants. Petitioner demonstrated she can already do both.

That petitioner wants to know the names of defendant's employees who were working that day also does not compel disclosure of the video in this proceeding. Questions about the employees for defendant who were working on the day of the accident and their potential liability are better suited for a plenary action.² And the instant petition does not seek the names of these defendants; instead, petitioner demands that the video be disclosed so she can try to identify these employees. That is not only inefficient but would require, presumably, that these employees were wearing name tags and the ability to actually see those names. In other words, the video is unlikely to help much.

Accordingly, it is hereby

² Such an inquiry would likely involve vicarious liability issues as well.

ORDERED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly in favor of respondent and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

9/2/2022		
DATE		ARLENE P. 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"/> GRANTED IN PART
APPLICATION:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<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