

Garcia v Trident Gen. Contr. LLC
2022 NY Slip Op 34154(U)
December 8, 2022
Supreme Court, New York County
Docket Number: Index No. 151183/2022
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY **PART** **23**

Justice

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KERLIN GARCIA

Petitioner,

- v -

TRIDENT GENERAL CONTRACTING LLC,

Respondent.

-----X

INDEX NO. 151183/2022

MOTION DATE 02/07/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9 were read on this motion to/for DISCOVERY - PRE-ACTION.

In this action for personal injuries, petitioner, Kerlin Garcia, moves, by order to show filed on February 7, 2022, cause for an order pursuant to CPLR 3102 for pre-action discovery, directing respondent, Trident General Contracting LLC (Trident), to immediately turn over to petitioner’s counsel certain discovery documents. Specifically, petitioner seeks: copies of any and all documents and information within Trident’s possession concerning petitioner’s employment records; copies of any and all documents regarding contracts for the work Trident was performing at 301 Park Avenue, New York, NY 10022 (the Construction site); copies of any accident reports (including a copy of the C-2 “Employer's First Report of Work-Related Injury/Illness”) concerning petitioner’s accident on August 17, 2021 (the accident); copies of any and all non-privileged emails or other correspondence concerning the accident; copies of any and all photos or videos (in color if originally in color) concerning the accident; a complete copy of all employment records concerning petitioner; copies of all OSHA reports, citations, or other documents concerning the accident; copies of any and all contracts with owner, lessee, general contractor and/or sub-contractors, concerning the work Trident was performing at the

Construction site on August 17, 2021, all of which will help to identify potentially liable defendants, and facilitate the drafting of a proper complaint.

Respondent submits no opposition.

Background

On August 17, 2021, petitioner was employed by Trident, and was performing construction related work when he was injured at the Construction Site which resulted in allegedly severe injuries (petition, NYSCEF Doc. No. 1).

Petitioner's counsel made attempts to obtain the purportedly relevant documents on August 31, 2021, December 8, 2021 (see petitioner exhibits B, C respectively, NYSCEF Doc. Nos. 5 & 6). On December 22, 2021, plaintiff's counsel called Trident at (718) 597-1369 and left a voicemail requesting the documents sought herein and advising that absent a response the instant motion would be filed (Horowitz affirmation at ¶ 9, NYSCEF Doc. No. 3). Counsel submits a "proof of delivery" signed for by "T. Henchy" at the front desk, on February 17, 2022, to respondent at 1160 Commerce Avenue, New York 10462, though there is nothing in the document reflecting what was actually delivered.

To date, Trident has not responded to petitioner's counsel nor has there been an opposition to the motion.

Discussion

CPLR 3102 (c) authorizes a court to order disclosure prior to the commencement of an action "to aid in bringing an action." A plaintiff may petition the court in order to identify potential defendants (*Matter of Stump v 209 E. 56th Street Corp.*, 212 AD2d 410, 410 [1st Dept 1995]), or to determine the way in which the complaint should be framed (*Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept 1989]).

“However, the law is settled that disclosure in advance of service of a summons and complaint is available only where there is a demonstration that the party bringing such a petition has a meritorious cause of action and that the information being sought is material and necessary to the actionable wrong. Thus, while a pre-action examination may be appropriate to facilitate accurate pleading, it is not permissible as a fishing expedition to ascertain whether a cause of action exists”

(*Liberty Imports v Bourget*, 146 AD2d at 536; see also *Matter of Uddin v New York City Tr. Auth.*, 27 AD3d 265, 265 [1st Dept 2006]; *Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [1st Dept 2000]).


Here, as in *Holzman*, petitioner fails to meet his burden in demonstrating that he has a meritorious cause of action “as he has failed to allege any facts supporting his bare claim that respondents were negligent and this this negligence cause his injury” (*Holzman*, 271 AD2d at 347). Here, petitioner merely alleges that he was injured on the third floor of the Construction site, which rendered him unable to work (petition, ¶ 3, NYSCEF Doc. No. 1; Horowitz affirmation, ¶ 4, NYSCEF Doc. No. 3). He provides no allegations as to what specific information he needs to substantiate his claim (*cf. Curtis v City of New York*, 2022 NY Slip Op 34015[U], *3 [Sup Ct, NY County 2022]). Accordingly, though unopposed, the petition is denied (*Matter of Stump v 209 E. 56th St. Corp.*, 212 AD2d 410 [1st Dept 1995]; *Matter of Lodato*, 2020 WL 5406015 [Sup Ct, NY County Sept. 3, 2020, index No. 805365/2019, Crane, J.]).

While pre-action discovery is also appropriate where a petitioner wishes to preserve evidence, as here, petitioner has failed to make the requisite showing to justify discovery at this time (*see e.g., Barash v Waldorf Astoria*, 2003 NY Slip Op 50642[U], *2 [Sup Ct, NY County 2003]; *cf. Son v 315 Mgt. Corp.*, 2018 NY Slip Op 32983[U], *2 [Sup Ct, NY County 2018]).

Conclusion

Accordingly, it is

ORDERED that the Petition and application, motion sequence number 001, is denied without prejudice to a further application on a proper showing.

<u>12/8/2022</u> DATE		 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE