

Dooley v City of New York
2022 NY Slip Op 35073(U)
May 20, 2022
Supreme Court, Richmond County
Docket Number: Index No. 150867/2019
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C2

-----X
ELIZABETH A. DOOLEY,

HON. THOMAS P. ALIOTTA

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 150867/2019

Motion No.: 001

CITY OF NEW YORK and NEW YORK
CITY POLICE DEPARTMENT,

Defendants.

-----X

Recitation, as required by CPLR 2219(a) of the following papers numbered were fully submitted on the 31st day of March 2022:

	Papers Numbered
Plaintiff's Notice of Motion, Affirmation & Exhibits	1, 2
Defendants' Affirmation in Opposition with Exhibits.....	3
Plaintiff's Reply Affirmation.....	4

Upon the foregoing papers, plaintiff's motion for an order pursuant to CPLR § 3124 and § 3126, is denied with leave to renew as follows:

This is an action for damages arising out of an alleged false arrest, malicious prosecution, and violation of plaintiff's civil rights. Plaintiff served on defendants a "Post-EBT Notice for Discovery Inspection" dated April 5, 2021. The notice demanded "Unredacted copies of the photo arrays shown to witnesses contained in Bates Stamp Def 0305, 0306, 0311, 0315, 0316 & 0320" (Ex. "A", NYSCEF 29). Following service of this demand, the Court issued four separate *sua sponte* compliance conference orders dated 6/22/21, 9/9/2021, 11/18/21, and 12/20/21. Each order directed defendants to "respond or object" to the foregoing notice (Ex. "B" - NYSCEF 28).

- NYSCEF 28). The order dated 11/18/21 granted plaintiff permission to serve this motion if no response or objection was received from defendants by 2/4/22.

Plaintiff e-filed this motion on February 8, 2022 seeking an order striking the defendants' answer or, in the alternative, precluding defendants from offering any evidence at the time of trial. In opposition to the motion, defendants have objected to the production of the demanded information on the grounds, *inter alia*, that the information is protected by Criminal Procedure Law § 160.50, law enforcement privilege and implicates privacy and security concerns of both non-parties and the individual defendants. Defendants also object on the grounds that the demand is prejudicial, palpably irrelevant, and palpably improper (Ex. "BB" - NYSCEF 32).

"It is a fundamental principle in civil litigation that '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof'" (*Slapo v. Winthrop Univ. Hosp.*, 186 AD3d 1281, 1282 [2d Dept 2020] citing *Allen v. Crowell-Collie Publ. Co.*, 21 NY2d 403, 405-407 [1968]; CPLR 3101[a]). The statute shall be liberally construed "to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Allen v. Crowell-Collie Publ. Co.*, 21 NY2d at 406; see *Vargas v. A. Lee*, 170 AD3d 1073, 1075 [2d Dept 2019]). However, the principle of full disclosure "does not give a party the right to uncontrolled and unfettered disclosure" (*Pascual v. Rustic Woods Homeowners Assn.*, 149 AD3d 757, 758 [2d Dept 2019]; see *McAlwee v. Westchester Health Assoc., PLLC*, 163 AD3d 547, 548 [2d Dept 2018]; *JPMorgan Chase, National Association v. Levenson*, 149 AD3d 1053, 1054 [2d Dept 2017]). Thus, it is not without limitations (*Trotman v. New York City Transit Authority*, 168 AD3d 1116 [2d Dept. 2019] and *Neiger v. City of New York*, 72 AD3d 663 [2d Dept. 2010]).

The scope of discovery is limited or “framed” by the pleadings (*Mavroudis v. State Wide Insurance Company*, 102 AD2d 864 [2d Dept. 1984], citing *Avco Security Corporation of New York v. Post*, 42 AD2d 395, 397 [4th Dept. 1973] and see *Willinger v. Town of Greenburgh*, 169 AD2d 715, 716 [2d Dept. 1995]). In other words, “The test of materiality should be relevancy of the material to the issues pleaded” (*Avco Security Corporation of New York v. Post*, 42 AD2d 397). Therefore, it is incumbent on a party seeking discovery to demonstrate that the requested disclosure “will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Crazytown Furniture, Inc. v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept. 1989]).

In a motion before the Court, the movant must satisfy the foregoing burden with more than just unsubstantiated bare allegations of relevancy to establish the factual predicate of relevancy (*101Co, LLC v. Sand Land Corporation*, 189 AD3d 942, [2d Dept 2020], citing *Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 421; see also *Wadolowski v. Cohen*, 99 AD3d 793, 794 [2d Dept 2012]).

Here, defendants’ objections are sustained. Plaintiff has not articulated a basis for the demanded discovery or demonstrated that it will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims as pleaded in the complaint (*101Co, LLC v. Sand Land Corporation* and *Crazytown Furniture v. Brooklyn Union Gas Co.*, *supra*). Further, plaintiff has not submitted the deposition transcript or the photo array at issue to lay the foundation for the post-deposition demand, both of which are essential to this Court’s determination since the complaint is devoid of allegations that plaintiff’s false arrest, malicious prosecution and the violation of her civil rights stem, in whole or in part, from the photo array at issue (*Id.*; see also *Wadolowski v. Cohen* and *Mavroudis v. State Wide Insurance*

Company, supra). Rather, plaintiff has only made unsubstantial bare allegations of relevancy in support of the demand and this motion (*101Co, LLC v. Sand Land Corporation, supra*). Thus, absent a factual predicate, the demands are palpably improper and the City's failure to timely object does not foreclose this Court's review of the challenges thereto (*Olmann v. Willoughby Rehabilitation and Health Care Center, LLC*, 186 AD3d 837, 840 [2d Dept. 2020]).

Pursuant to CPLR § 3126, a court may impose discovery sanctions, including the striking of a pleading or preclusion of evidence, where a party refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed" (*Aha Sales, Inc. v. Creative Bath Prods., Inc.*, 110 AD3d 1019 [2d Dept. 2013] [internal quotations omitted]). However, in the discretion of the Court, sanctions in this action pursuant to CPLR § 3126 are unwarranted based upon plaintiff's failure to establish a factual predicate for the demanded discovery.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for an order pursuant to CPLR § 3124 and § 3126 is denied.

This constitutes the decision and order of the Court.

Dated: May 20, 2022

ENTER:



HON. THOMAS P. ALIOTTA, J.S.C.