

Pasley v City of New York
2022 NY Slip Op 35109(U)
May 12, 2022
Supreme Court, Bronx County
Docket Number: Index No. 814097/2021E
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

COURTNEY PASLEY,

Plaintiff,

-against-

Index No.: 814097/2021E

DECISION/ORDER

Present:

HON. MITCHELL J. DANZIGER

CITY OF NEW YORK, et. al.,

Defendants,

-----X
Recitation as Required by CPLR §2219(a): The following papers
were read on this Motion to Compel:

Papers Numbered

Notice of Motion, Affirmation in Support, and Exhibits.....
Notice of Cross-Motion, Affirmation in Opposition and
Support.....
Affirmation in Opposition and Further Support.....

1
2
3

Motion by plaintiffs, for an order pursuant to CPLR §3124 to compel the defendants, City of New York and the New York City Police Department ("City"), Police Officer Brendan Latimer, and Police Officer Christina Moncion to comply with plaintiffs' Supplemental Notice for Discovery & Inspection dated 2/2/22 and/or produce said discovery for an in camera inspection for the documents that defendants claim to be privileged and for a default judgment, and defendants' cross-motion to dismiss plaintiff's negligent hiring, supervision and training claim and for a protective order pursuant to CPLR §3103, is resolved as follows:

As in initial matter, the plaintiff withdrew the portion of his motion seeking a default judgment, and as such, the Court will need not consider any arguments related to the same from any party.

This is an action for personal injuries stemming from plaintiff's arrest by officers of the New York City Police Department on January 26, 2019, in the vicinity of Creston Avenue and East 183rd Street, Bronx, New York. In his Summons and Complaint, plaintiff alleges the following causes of action: 1) false arrest/false imprisonment, 2) malicious prosecution, 3) assault and battery, 4) negligent hiring, retention, training, and supervision, 5) abuse of process,

6) 42 U.S.C. §1983 claims as against the City, and 7) 42 U.S.C. §1983 claims as against the named officers.

On February 2, 2022, plaintiff served upon the defendants a Supplemental Notice of Discovery & Inspection seeking the following discovery:

- a. All NYPD Internal Affairs Bureau reports and investigations founded and unfounded, related to named defendants including but not limited to any audio or video files;
- b. All CCRB reports and investigations, founded and unfounded, related to named defendants including but not limited to any audio or video files;
- c. All transcripts of any and all disciplinary hearings (and any exhibits used therein) including but not limited to video files and any audio files of any and all GO-15 hearings for named defendants;
- d. Kindly provide the final outcome and/or disposition of any and all complaints, IAB/CCRB or any other investigative body founded or unfounded, lodged against named defendants.
- e. Kindly provide the final written opinion or memorandum supporting the disposition as well as any discipline imposed related to any and all complaints or investigations, including factual findings, analysis of conduct and appropriate discipline with regard to named defendants;
- f. Any and all records related to and connected with personnel file, any employment application to NYPD, training at NYPD, and supervision of named defendants. Said records to span from date of application and hire to present.
- g. Copy of named defendants Central Personnel Index files;
- h. Copy of any and all traffic summons/citations/tickets issued to operator of motor vehicle which was unlawfully stopped and in which plaintiff was a passenger.

In response to plaintiffs' demands (a-g), the City raised numerous objections including that plaintiffs' demands were duplicative, vague, ambiguous, unduly burdensome, assumes facts not true or established, not limited in time, seeks information concerning allegations of misconduct that are not similar to the allegations herein, or false statements that are not relevant or reasonably calculated to lead to admissible evidence, seeks protected information subject to the official information privilege, the law enforcement/investigatory privilege, *Monell* discovery, personal and confidential information regarding officers and non-party individuals, sealed information pursuant to NY CPL §160.50, seeks material not material and necessary to the prosecution of the case, and is subject to redaction for personal identifying information.

Plaintiff now seek a court order compelling the above discovery. The City opposes plaintiff's application on the ground that the City has fully responded to plaintiff's demand, that plaintiff's demand is palpably improper, plaintiff cannot maintain a valid claim for negligent

hiring, supervision, and training because the police officers involved were acting within the scope of their employment and such claim should be dismissed. The City also cross-moves for a protective order for the discovery sought due to the sensitive nature of information contained within records sought by the plaintiffs.

In *Zhang v. City of New York*, 198 A.D.3d 504 (1st Dept. 2021), the First Department affirmed the lower court's decision which granted plaintiff's motion to renew and reargue, and upon renewal and reargument, ordered that the City defendants produce certain police officer personnel and disciplinary records from the NYPD and the CCRB, and denied the defendants cross-motion for an in camera inspection of such records. The reconsideration was granted because New York Civil Rights Law §50-a was repealed shortly after the initial order denying the motion to compel was issued. The First Department stated that "based on the liberal discovery standard set forth in CPLR §3101, without considering the confidentiality conferred by the now repealed §50-a, plaintiff demonstrated that the document requests seek records material to the claims pled in the complaint, which includes claims against the City defendants for negligent non-compliance with statutory requirements that may be supported by evidence in the personnel and disciplinary records." The First Department then expressly rejected the City's argument that the officers were acting within the scope of their employment and therefore plaintiff's negligent hiring and retention claims could not stand noting that the City should have but did not move to dismiss such claims.

Here, plaintiff has alleged negligent hiring and retention claims, as well as federal claims against the named officers. As such, the named officers' disciplinary records are discoverable. The City's objections to disclosure of these records are unavailing and more appropriately addressed to the trial court when the relevance and admissibility of those records at trial are at issue. (*Zhang v. City of New York*, 2021 N.Y. Misc. LEXIS 5821 [Sup. Ct. NY Cty. November 5, 2021]). Further, the City has not justified the application of the privileges they have asserted. (*King v. Conde*, 121 F.R.D. 180 [1988]). Conclusory assertions of general harm are insufficient. (*City of New York v. Keene Corp.*, 304 A.D.2d 119 [1st Dept. 2003]).

Taking into consideration that the plaintiffs could have obtained these records through a Freedom of Information Law ("FOIL") request, and that the records as demanded, could be voluminous and perhaps not material to the action, at this time, the City is ordered to exchange the following: the Personnel Files, the IAB Resumes, the CCRB Histories, and Central Personnel

Indexes for all the named officers from the date of hire to the present, subject to redaction of personal identifying information, HIPAA protected information, and the information specified in Public Officers Law 89 2(b)i-v only. The Court need not conduct an in camera inspection of these documents.

Upon receipt of said documents, the plaintiff may seek additional records related to any misconduct that is material to their claims for negligent hiring and retention and their federal claims as against the named officers. The City is ordered to provide the aforementioned discovery to the plaintiffs within 120 days of this order. Should the City be unable to produce said discovery within 120 days, the City shall, upon motion, seek an extension of time, prior to the expiration of the 120 days. Said application shall include an affidavit and/or affirmation by a person with knowledge that details the efforts made to comply, what remains outstanding, why they were unable to timely comply with the order, and when such outstanding discovery will be obtained and turned over. CPLR §§2004 and/or 2005. Failure to timely move for an extension prior to the expiration of the 120 period may result in the denial of any extension request made.

With respect to “h” of plaintiff’s demand, the City is directed to turn over a copy of any summons/citation/ticket issued to the driver of the motor vehicle in which plaintiff was a passenger on the date of incident. The Court has previously signed an unsealing order and the City indicated it is searching for documents responsive to this request. The City is to exchange any responsive documents within 30 days of this order.

Turning to the City’s cross-motion, first the City seeks to dismiss plaintiff’s negligent hiring, training, and retention claim because the police officers involved in plaintiff’s arrest were acting within the scope of their employment. Plaintiff opposes the City’s motion and submits that the defendants have failed to make a clear concession that the individual officers were acting within the scope of their employment. The City, by way of its’ Amended Answer admits in paragraphs 5, 6, 7, and 8, that the named officers were duly appointed and acting within the scope of their employment. While this admission is a concession that the officers were working within the scope of their employment, it is made through defense counsel only. A claim for negligent hiring and retention “may be dismissed upon a proper evidentiary showing that the officers were acting within the scope of their official duties...defendants failed to make such a showing.” *Chavez v. City of New York*, 99 A.D.3d 614 (1st Dept. 2012). As a result, the portion

of the City's cross-motion seeking dismissal of plaintiff's negligent hiring and retention claim, is denied.

The City's cross-motion for a protective order is granted to the extent that the plaintiff is to use the above ordered discovery during the course of the within litigation for the within litigation only, may disclose the discovery to the plaintiff's expert needed for litigation, but not to any other third-party, shall not duplicate the discovery for any purpose other than one related to this litigation, shall not publish the discovery by any means, including in Court filings, unless under seal, including deposition transcripts.

Accordingly, the plaintiff's motion is granted in part and the City's cross-motion is granted in part. This constitutes the order and decision of the Court.

Dated: 5-12-22
Bronx, New York


HON. MITCHELL J. DANZIGER, J.S.C.