SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART

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BRUCE LAZAR AND LAURA LAZAR,

Plaintiff,

- v -

THE CITY OF NEW YORK, URBAN D.C. INC.,89 GREEN STREET CONDOMINIUM ASSOCIATION, THE ANDREWS ORGANIZATION, INC. D/B/A ANDREWS BUILDING CORP., ETRO U.S.A., INC.

Defendant.

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INDEX NO. 157681/2019

MOTION DATE 07/19/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

Upon the foregoing documents, it is

This is an action to recover monetary damages for personal injuries sustained on September 1, 2018, when plaintiff allegedly tripped on a metal vault-light cover in front of 89 Greene Street. Defendant Etro, which owned the building, alleges that the building's landmark status prohibited it from repairing the vault-light cover that plaintiff allegedly tripped on. The other defendants are 89 Greene Street Condominium Association and the Andrews Organization, Inc. (hereinafter, "89 Greene Street, " collectively), which managed the building and the City of New York ("City").

Plaintiff filed his Note of Issue on April 5, 2022, indicating that discovery had concluded and the case was ready for trial. Etro, joined by 89 Greene Street, now moves to vacate the Note of Issue and strike the case from the trial calendar, or, in the alternative, compel the City to produce two additional witnesses for deposition. Specifically, Etro is seeking to depose a witness from the City Department of Transportation ("DOT") who is familiar with markings on Big Apple Maps and could, according to Etro, establish whether the City had prior written notice of the allegedly dangerous condition that caused the plaintiff's fall.

Etro also seeks to depose Sarah Carroll, a Commissioner with the New York City Landmarks Commission.

Previously, the City produced Stacey Williams, a DOT employee, for a deposition in order to authenticate records relating to the subject location that were produced by the DOT following a search of their records. Those records included what is commonly known as a Big Apple Map. Ms. Williams testified that Big Apple Maps are received by the City from a private corporation and are subsequently stored. Ms. Williams could not identify or interpret any of the markings on the subject Big Apple Map. According to Etro's motion, Ms. Williams was also unable to state what actions, if any, the City would take in response to a Big Apple Map identifying or noting a defective condition at a particular location. Etro now is moving to compel the City to produce a witness from the DOT who can interpret the Big Apple Map and testify as to any course of action the City would take in response to a Big Apple Map.

The City objects to this request on the ground that it is irrelevant and overbroad. The Court agrees. Firstly, there is no evidence in the deposition testimony or in the record that suggests that the City or any of its employees have any relevant expertise in interpreting Big Apple Maps. This is neither surprising nor controversial. Unlike permits, applications for permits, violations and/or complaints, documents which DOT or the City create and generate, Big Apple Maps are created by a private entity and funded by trial attorneys with no connection to the City. They are served upon the City for the sole purpose of complying with the relevant statute requiring, as a perquisite to a viable lawsuit against the City for injuries sustained as a result of defects in city streets and sidewalks, prior written notice to the City of any such defective conditions (*see Walter v Jenkins*, 137 AD3d 1014, 1015 [2d Dept 2016]). No City witness would be expected to have any special expertise or knowledge in interpreting the markings on a map that the City did not create and which is being proffered as evidence against them in anticipation of litigation.

Furthermore, prior written notice, such as the Big Apple Map might provide, would only be relevant if it was established that the City had a duty to maintain the sidewalk area where the plaintiff fell. At his point, there is nothing in the record to suggest that the provisions of NYC Administrative Code §7-210 are inapplicable to this case. Accordingly, liability for injuries arising from any defects on the subject sidewalk would have shifted from the City to the abutting property owner, rendering the issue of prior written notice irrelevant.

The motion also seeks to compel a deposition of Ms. Sarah Carrol, the Chairperson of the NYC Landmarks Preservation Commission. Previously, the City produced Cory Herrala, the director of the preservation department at the NYC Landmarks Preservation Commission, who testified as to the meaning of records that his search revealed. *See* Herrala EBT Transcript, Exhibit "E," at p. 14, Ins. 2-6, et passim. Mr. Herrala oversees the entire preservation department and has worked for the Landmarks Commission for approximately fifteen years. *Id.* at p. 14, Ins. 10-16; p. 15, Ins. 19-20.

At his deposition Mr. Herrala testified to the process by which the NYC Landmarks Preservation Commission reviews applications for permits. *See* Herrala EBT Transcript, annexed hereto as Exhibit "E." There are two relevant types of permits: staff-level permits and commission-level permits. For staff-level permits, staff within Mr. Herrala' s department reviews applications for permits for work on landmarked property and if the application meets certain criteria, the staff will issue a "certificate of no effect." *Id.* at p 30, In. 21 -p. 31, Ins. 15. If the proposed work does not qualify for staff-level review, the staff does not deny the work but rather may redirect the application to the commission level, which entails a public hearing and greater review. *Id.* at p. 30, Ins. 8-17; at p. 31, Ins. 2-5. The commission consists of eleven (11) commissioners, including a chair. *Id.* at p. 64, Ins. 10-15. A permit application which the commission reviews and approves at a public hearing will result in a "certificate of appropriateness." *Id.* at p. 88, Ins. 7-17. The commission itself, at a public hearing, would review an application for a permit to level off, resurface, or redesign a vault-light cover. *Id.* at p. 60, Ins. 6-15; p. 61, Ins. 5-10. Mr. Herrala knows of at least one instance in which a permit to change the level of a vault-light cover was granted. *Id.* at p. 68, In. 19 - p. 69, In. 13. He does not know if the commission ever denied an application to level off a vault cover in Soho. *Id.* at p. 70, Ins. 9-12. However, the record contains no evidence that Etro or anyone else ever made an application to alter, redesign, or level off the subject vault-light cover at 89 Greene Street. *Id*, at p. 63, Ins. 11-15

Mr. Herrala also testified regarding a search performed by the Commission for permits, permit applications, and related documentation for the subject sidewalk. While some documents were located, none of the records found in anyway relate to permits or applications concerning the alteration, redesign, removal, or levelling off the subject vault-light overs. Nevertheless, the moving defendants claim that Ms. Carroll should be compelled to testify concerning her knowledge of the process for obtaining such permits. Any testimony from Ms. Carroll regarding the potential removal or alteration of the existing vault-light

covers would be speculative at best and completely irrelevant to the factual circumstances of this case. Had the defendants made a prior application to remove or alter the vault-light covers, Ms. Carroll would have been aware of the application, pursuant to the procedures set forth by Mr. Herrala, and could have perhaps opined on its merits and/or offered a considered evaluation as to whether and under what circumstances, if any, such an application would be granted. No such application was ever made. As such any testimony from Ms. Carroll, or any other commissioner, would amount to pure speculation as to how the commission would have decided a hypothetical application based on hypothetical or unknown evidence. In short, it would constitute nothing more than a fishing expedition that would not provide any help in resolving the relevant legal or factual issues in this case.

As such, the defendants have failed to demonstrate that they are entitled to further discovery from the City. Accordingly, the motion to vacate the note of issue is denied.

2/28/2023
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:		CASE DISPOSED			[X]	NON-FINAL DISPOSITION	
		GRANTED	[X]	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

157681/2019 BRUCE LAZAR AND LAURA LAZAR vs. CITY OF NEW YORK
Motion No. 001