

Caroselli v City of New York

2023 NY Slip Op 31252(U)

April 19, 2023

Supreme Court, New York County

Docket Number: Index No. 152817/2023

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

RICHARD CAROSELLI,

Petitioner,

- v -

THE CITY OF NEW YORK, NYC HEALTH AND
HOSPITALS CORPORATION

Respondent.

-----X

INDEX NO. 152817/2023

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 discovery is granted in part and denied in part.

Background

Petitioner claims that he was in an accident on the fifteenth floor of Metropolitan Hospital, located at 1901 First Avenue in Manhattan, on December 23, 2022. He claims that he was sent to the premises to repair a steam pipe in the hallway outside of the IT department. Petitioner says he was on a ladder trying to fix the steam pipe when it exploded and caused him to suffer severe burns. He claims that he brought the instant proceeding to find about which entities leased the property and which entities owned the property.

He seeks numerous items including:

“a. all invoices, leases, contracts, records, agreements and incident reports made and kept by respondents, their agents, servants and/or employees in the ordinary course of their business having and concerning the petitioner's accident;

- b. documents related to the replacement and or renovation of the floors on the 15th floor on 12/23/2022;
- c. the names of any outside contractors performing work on the 15th floor on 12/23/2022;
- d. copies of relevant leases, subleases, contracts and/or agreements related thereto.
- e. identifying information related to any outside contractors involved in the work to the floor;
- f. service agreements;
- g. contracts and subcontracts to perform work at the premises;
- h. Documents showing what entities owned, managed, controlled, operated, maintained, repaired, controlled the premises.
- i. Documents showing what entities supervised, controlled, directed, oversaw, the work performed on the pipes at the time Petitioner was injured.
- j. Petitioner also seeks preservation of relevant documents, and preservation of the site of the injury.
- k. Petitioner also seeks an Order compelling an inspection of the premises” (NYSCEF Doc. No. 1 at 2-3).

In opposition, respondents claim that they do not oppose the branch of the petition that seeks an order compelling respondents to preserve evidence. They object, however, to the portions of the petition that seek pre-action disclosure. Respondents claim that this type of proceeding is to help a petitioner draft a complaint and that petitioner has that information.

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, except to the extent that respondent must preserve all relevant evidence (which respondent has already agreed to do). As respondent points out, petitioner has more than enough information to frame a complaint. He knows the exact date of the accident and precisely where he was when the accident occurred. Petitioner also has details about why he was at the location—to fix the steam pipe—and therefore, he can presumably fashion causes of action. To the extent that petitioner claims he does not know who owned or leased the property, the Court observes that the incident occurred at Metropolitan Hospital, which is part of the New York City Health and Hospitals system, a fact that petitioner apparently knows as he named this entity as a respondent here. And petitioner did not sufficiently explain why he needs various leases or has questions about ownership; in fact, petitioner bizarrely claims that “I do not know if ownership of the property where I was injured was by a condominium board or [] a cooperative corporation” (NYSCEF Doc. No. 1, ¶ 17) despite claiming the accident happened at a hospital.

Petitioner’s remaining requests for relief amount to broad-based discovery demands typically found in a plenary action. Those demands should be served in such an action, not in this special proceeding.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondents are directed to preserve all relevant evidence relating to the accident alleged in the petition and denied with respect to the remaining relief requested, and the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents WITHOUT costs or disbursements upon presentation of proper papers therefor.

4/19/2023

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE