

Wright v City of New York

2024 NY Slip Op 30394(U)

February 5, 2024

Supreme Court, New York County

Docket Number: Index No. 154194/2022

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA

PART

Justice

-----X

INDEX NO. 154194/2022

HILLARY WRIGHT,

MOTION DATE 01/30/2024

Plaintiff,

MOTION SEQ. NO. 003

- v -

CITY OF NEW YORK, MAYOR BILL DE BLASIO, NEW
YORK CITY POLICE DEPARTMENT ("NYPD")
COMMISSIONER DERMOT SHEA, NYPD CHIEF OF
DEPARTMENT TERENCE MONAHAN, NYPD MEMBER
DOES

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for DISCOVERY

Upon the foregoing documents, and after oral arguments held virtually on February 1, 2024, in which plaintiff and defendants City of New York, Mayor Bill De Blasio, New York City Police Department Commissioner Dermot Shea, and NYPD Chief of Department Terence Monahan were present, plaintiff's instant order to show cause seeking to compel defendants to identify the John Doe defendants, and seeking permission to file an amended complaint, is hereby granted for the reasons set forth below.

Preliminarily, the Court notes that the instant order to show cause was originally assigned to the Honorable Hasa A. Kingo. However, at the time of filing, Judge Kingo was unable to review the order to show cause and it was sent to the judge handling *ex parte* applications. The instant order to show cause was signed with the return date being with Judge Kingo on February 20, 2024. However, following the signing of this order to show cause, the exigent circumstances

of the instant application came to the Court's attention. The Court contacted all parties and scheduled immediate virtual arguments which were conducted on February 1, 2024. Opposition papers were ordered to be filed by 4:00pm on February 2, 2024.

On February 12, 2021, plaintiff attended a demonstration where she alleges that five NYPD officers, sued herein as NYPD Member Does, threw her to the sidewalk, piled on top of her, and assaulted her. The instant action was commenced on May 13, 2022. Due to the late answer of one of the defendants, no discovery has been conducted to date. The instant emergency application, seeking, *inter alia*, to compel defendants to reveal the identity of the John Doe defendants, was necessitated by the fact that the statute of limitations will soon expire on plaintiff's claims against such John Doe defendants. According to plaintiff, she will be irreparably harmed by defendants' continued refusal to exchange discovery.

In opposition, defendants argue that plaintiff could have, but did not, make a FOIL request to obtain the information sought herein. Defendants further argue that plaintiff failed to provide defendants with an unsealing authorization until January 24, 2024 such that defendants were unable to investigate the identity of the John Doe defendants as the file was sealed. According to defendants, plaintiff did not file an RJI until October 16, 2023 and never filed a request for a preliminary conference. Defendants further argue that plaintiff failed to confer regarding discovery at the preliminary conference on January 23, 2024. Such conference was adjourned to January 30, 2024, and is currently scheduled for February 6, 2024. Defendants contend that plaintiff delayed this proceeding by not providing an unsealing authorization until January 24, 2024, causing defendants to be prejudiced in providing such discovery in such a short time frame. Defendants further argue that a Case Scheduling Order has not yet been entered into ordering discovery. Moreover, defendants argue that the portion of plaintiff's order to show

cause seeking to amend the complaint must be denied as the request is premature in that the John Doe defendants are unknown at this time and no proposed amended complaint has been included in the instant papers. Although reply papers were filed, the Court did not order reply papers and such papers were not considered.

Here, plaintiff timely commenced this action in 2022. However, discovery in this action was delayed for over a year as one of the defendants failed to answer. Following plaintiff's filing of a motion for a default judgment, an answer was filed and this action could finally proceed. A prior order to show cause was filed seeking the relief sought herein. The prior justice presiding over this action at the time declined to sign such order to show cause based upon her part rules which ordered parties to conference the issue prior to making a motion for discovery. Following the prior order to show cause, two discovery conferences were held in an effort to work out the discovery. On the first of such conferences on January 23, 2024, defendant requested for the first time that plaintiff provide an unsealing authorization. The discovery conferences did not yield any progress in discovery. The instant order to show cause was filed thereafter.

Despite defendants' arguments regarding plaintiff's alleged delay in providing an unsealing authorization, the record reflects that such authorization was requested by defendants for the first time on January 23, 2024. Plaintiff, without delay, provided such authorization to defendants on January 24, 2024, the very next day. Here, plaintiff timely filed the instant action and timely moved for a default judgment so that this action could proceed. Plaintiff has demonstrated "genuine efforts to ascertain the defendants' identities prior to the running of the Statute of Limitations". *Tucker v Lorieo*, 291 AD2d 261, 261 (1st Dep't 2002)(internal citations omitted).

Despite the delays in this action, discovery must be exchanged. It is well settled that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action”. CPLR 3101. The requested documents are clearly relevant. Plaintiff has established sufficient circumstances to warrant compelling the discovery sought herein at this juncture. In fact, despite defense counsel’s bald statements alleging prejudice, none has been shown. It can be no surprise to defendants that plaintiff would seek the identities of the John Doe defendants involved in the incident at issue here. Defendants’ opposition papers would have the Court believe that no discovery is permitted amongst the attorneys without first the issuance of a Case Scheduling Order or a preliminary conference. This is far from the truth. It is common practice for attorneys to confer outside of court in an effort to proceed with discovery, and to file an RJI only when intervention by the court is necessary. Here, the unsealing authorization was provided immediately following defendants’ request. Defendants’ opposition papers have failed to establish prejudice. Defendants have wholly failed to provide any details regarding the time necessary to obtain the discovery requested herein. In contrast, failure to provide such routine discovery could cause irreparable damage to plaintiff’s action. As such, plaintiff’s order to show cause is granted to the extent that defendants are ordered to provide the identities of the John Doe defendants on or before February 7, 2024. Failure to comply with the instant order shall result in the striking of defendants’ answer. This is a self executing order; no further motions need to be filed for the answer to be stricken. Should defendants fail to comply, plaintiff is directed to file an affidavit to such effect on or before February 8, 2024 and email a copy of such filed affidavit to the Court via the court attorney.

With regards to the portion of plaintiff’s order to show cause to amend the caption, CPLR 3025(b) states that “[a] party may amend his pleading, or supplement it by setting forth

additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” Leave to amend pleadings is generally freely granted, absent prejudice and surprise resulting from the delay. *See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 (1st Dep’t 2006). To find prejudice, there must be some indication that a party has been hindered in the preparation of his case or prevented from taking some measure in support of his position. *See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 (1st Dep’t 2000). Here, plaintiff seeks to amend the complaint to substitute the identities of the current John Doe defendants. Defendants have failed to establish any prejudice. As there is no prejudice to defendants, plaintiff’s order to show cause is hereby granted. Upon receiving the identities of the John Doe defendants from the defendants on or before February 7, 2024 as ordered herein, plaintiff shall file an amended complaint on or before February 13, 2024.

Accordingly, it is

ORDERED that plaintiff’s order to show cause is granted to the extent that defendants are ordered to provide plaintiff with the identities of the five John Doe defendants on or before February 7, 2024; and it is further

ORDERED that defendants’ failure to comply with this Decision/Order may result in the striking of defendants’ answer without any further motion practice; and it is further

ORDERED that, in the event of defendants’ failure to comply, plaintiff shall file an affidavit to such effect on or before February 8, 2024 and email a copy of such filed affidavit to the Court via the court attorney; and it is further

ORDERED that plaintiff’s order to show cause is granted to the extent that plaintiff is permitted to file an Amended Complaint to substitute the name of the identified officers on or

before February 13, 2024; and it is further

ORDERED that any future motions regarding the issues raised in the instant order to show cause, and decided in the instant Decision/Order, shall be made returnable to the Honorable Adam Silvera; and it is further

ORDERED that the parties shall appear on February 6, 2024 at 2:00pm in room 103 of 80 Centre Street, New York, NY for a discovery conference; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

2/5/2024

DATE



ADAM SILVERA, 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