

**Prats v City of New York**

2024 NY Slip Op 30462(U)

January 25, 2024

Supreme Court, New York County

Docket Number: Index No. 53145/2023

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21**

*Justice*

-----X INDEX NO. 153145/2023

ANDREW PRATS,

MOTION SEQ. NO. 001

Petitioner,

- v -

THE CITY OF NEW YORK, NEW YORK POLICE  
DEPARTMENT, NEW YORK DEPARTMENT OF  
TRANSPORTATION, METROPOLITAN TRANSPORTATION  
AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,  
NEW YORK CITY FIRE DEPARTMENT,

**DECISION + ORDER ON  
MOTION**

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6  
were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, and following oral arguments, the Petitioner’s leave for production and preservation of early disclosure pursuant to CPLR §3102 [c] is denied in part and granted in part.

The underlying incident concerns a March 9, 2023 accident wherein the Petitioner, ANDREW PRATS, who was 80 years old at the time, was struck by a Neal Tours, LLC bus as the Petitioner was in the process of boarding a public bus on the M42 line at or near the intersection of Lexington Avenue and East 42<sup>nd</sup> Street in Manhattan. As a result of the contact with the bus, the Petitioner was knocked to the street and was wedged between the Neal Tours, LLC bus and the street. (NYSCEF Doc. 3)

The Petitioner, before commencing an action, moves by order to show cause, for an order restraining Respondents THE CITY OF NEW YORK (the “CITY”), NEW YORK POLICE DEPARTMENT (“NYPD”), NEW YORK DEPARTMENT OF TRANSPORTATION (“DOT”), NEW YORK CITY FIRE DEPARTMENT (“FDNY”) and THE NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY (“TRANSIT”) from destroying any video footage of the subject accident and directing the Respondents to produce “all

videos, still photos and documents that reflect the happening of the accident” and its aftermath and rescue efforts. Respondents NYPD and TRANSIT oppose the Petition and motion by order to show cause (NYSCEF Doc. 5, 6).

Under CPLR §3102[c] before commencing an action, a party, only by court order, may seek discovery to aid in bringing the action, to preserve information, or to aid in arbitration.

The party seeking the discovery has the burden of establishing facts that “fairly indicate” a meritorious cause of action and that the discovery sought is material and necessary to prepare accurate pleadings (*Emmrich v Technology for Information Management, Inc.*, 91 AD2d 777 [3<sup>rd</sup> Dept 1982]; see *Liberty Imports v Bourguet*, 146 AD2d 535 [1st Dept 1989]; *Bliss v. Jaffin*, 176 AD2d 106 [1<sup>st</sup> Dept. 1991]; *Holzman v. Manhattan and the Bronx Surface Transit Operating Authority*, 271 AD2d 346 [1<sup>st</sup> Dept 2000]; *Uddin v New York City Transit Authority*, 27 AD3d 265 [1<sup>st</sup> Dept 2006]; *White v New York City Transit Authority*, 198 AD3d 557 [1<sup>st</sup> Dept 2021]).

Importantly, however, a petitioner is not entitled to pre-action discovery for the purpose of exploring whether she or he has a cause of action or has alternative theories of liability (*Liberty Imports*, 146 AD2d 535; *Bliss*, 176 AD2d 106; *Holzman*, 271 AD2d 346; *Uddin*, 27 AD3d 265; *White*, 198 AD3d 557).

Here, the Petitioner argues that the video footage from any cameras that may have captured the subject accident is vital to the investigation into this incident and that an order restraining any routine destruction of such video is appropriate. NYPD does not oppose preserving the video footage and asserts that it already made efforts to preserve any video (NYSCEF Doc. 5). TRANSIT likewise asserts that it has requested that relevant materials be preserved (NYSCEF Doc. 6).

This Court previously issued a temporary restraining Order directing Respondents to preserve all videos that capture the accident. Upon review, the Petitioner has shown that such video will be material and necessary if this matter proceeds to litigation. Therefore, pursuant to CPLR §3102[c], those Respondents who manage and control any cameras in the area of the intersection of Lexington Avenue and 42<sup>nd</sup> Street, including those identified herein as NYPD camera 726105 and 72695, are directed to preserve video footage depicting the March 9, 2023 accident and any subsequent rescue efforts, to the extent such videos exist and are in their control. Additionally, TRANSIT is directed to preserve any video footage from its M42 bus which the Petitioner was parked/stopped near the Neal Tours LLC bus at the time of this incident that depicts the accident and/or any subsequent rescues efforts, to the extent such videos exist and are in its control.

Moreover, those Respondents who conducted any investigation into the subject incident are directed to preserve any investigative photos and documents concerning the subject accident and subsequent rescue efforts, to the extent such materials exist and are in their control.

The Petitioner also asserts that the Respondents should produce, pre-action, any video, photographs or documents concerning this accident so that the correct TRANSIT bus can be identified by bus number and so that the bus operator can be identified. At argument, the Petitioner also advised that the video in particular was being sought pre-action in part in order to determine how the Neal Tours, LLC bus came into contact with the Petitioner and to hopefully identify any witnesses. The Petitioner also explained that information regarding this incident was not known to the Petitioner because the accident resulted in his being trapped for a period of time on the street where he was in an out of consciousness. The Petitioner further advised that attempts to secure any video footage from surrounding business was unsuccessful.

Both NYPD and TRANSIT oppose producing any video, photographs or documents related to the accident at this early juncture, arguing that the Petitioner has sufficient information to form the notice of claim and the complaint.

Upon review, the police accident report (annexed to the affirmation in support and not separately efiled) establishes the date, time and location of this incident as well as information related to the Neal Tours, LLC bus that stuck the Petitioner. It is also clear that the Petitioner has been able to identify that a TRANSIT bus may have been involved. Although the specific bus and its operator are not yet identified, the line, M42 is known, as is its location at the time of the accident; the north side of 42<sup>nd</sup> Street, just east of Lexington Avenue near a designated bus stop at approximately 1:30 on March 9, 2023.

Thus, it is clear that the items sought, the video, photographs and unspecified documents are not material and necessary to prepare the notice of claim or to frame the complaint. Where a petition for pre-action discovery clearly shows that the petitioner knows the date and location of the accident and the individuals involved in the accident and the alleged cause of the accident, the petitioner has sufficient facts and information to frame the complaint. (*see White*, 198 AD3d 557; *Uddin*, 27 AD3d 265). Accordingly, that branch of the motion which seeks pre-action disclosure of video footage and or photographs and documents is denied. However, as the Petitioner knows the bus line and its location at the time of the accident, TRANSIT is directed to identify and disclose to the Petitioner, if not already done, the bus number, license plate number and the

operator of the M42 bus that was present at subject location at the time of the subject incident within 30 days.

Accordingly, it is hereby

ORDERED that the branch of the Petition seeking the preservation of video footage of the accident and its aftermath is granted to the extent that those Respondents who manage and control any cameras in the area of the intersection of Lexington Avenue and 42<sup>nd</sup> Street, including those identified herein as NYPD camera 726105 and 72695, are directed to preserve video footage, to the extent such videos exist and are in their control; and it is further

ORDERED that the branch of the Petition seeking the preservation of video footage is further granted to the extent that TRANSIT is directed to preserve any video footage depicting this accident and its aftermath, from the M42 bus, which was stopped/parked adjacent to the Neal Tours, LLC bus, to the extent such videos exist and are in its control; and it is further

ORDERED that the branch of the Petition seeking the preservation of photos and documents is granted to the extent that those Respondents who conducted any investigation into the subject incident are directed to preserve any investigative photos and documents concerning the subject accident and subsequent rescue efforts, to the extent such materials exist and are in their control;

ORDERED that the branch of the Petition which seeks an Order directing the Respondents to produce pre-action any video footage, photographs and documents is denied; and it is further

ORDERED that TRANSIT is directed to identify and disclose to the Petitioner, the bus number, license plate number and operator of the M42 bus that was stopped/parked adjacent to the Neal Tours LLC bus at the time of this incident; and it is further

ORDERED that as the within Petition has been denied in part and granted in part, the Petition is now dismissed; and it is further


ORDERED that within 20 days from the entry of this order, Petitioner shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on*

*Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby expressly denied.

1/25/2024  
DATE

  
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DENISE M DOMINGUEZ, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE