

Wilson v City of New York

2025 NY Slip Op 33793(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 162348/2025

Judge: Hasa A. Kingo

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. HASA A. KINGO PART 05M

Justice

-----X

JELANI WILSON,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF PARKS & RECREATION

Defendant.

-----X

INDEX NO. 162348/2025

MOTION DATE 09/10/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 9, 10 were read on this motion to/for DISCOVERY - PRE-ACTION.

Upon the foregoing documents, petitioner Jelani Wilson (“Petitioner”) moves for an order pursuant to CPLR § 3105 (c) for pre-action preservation and disclosure. For the reasons set forth herein, the motion and petition are granted in part and to the extent set forth herein.

DISCUSSION

In this special proceeding for pre-action disclosure, Petitioner seeks preservation and production of items in connection with an injury purportedly sustained on July 14, 2025, at approximately 8:30 p.m., when a leader, limb, or tree branch fell from a tree located on the western sidewalk of Bradhurst Avenue at or about the western curb of Bradhurst Avenue and within approximately twenty feet from the westernmost crosswalk of the intersection of Bradhurst Avenue and West 148th Street, New York, New York (NYSCEF Doc No. 1, petition ¶ 3). After the incident, Petitioner was admitted to Harlem Hospital for approximately one month, having undergone several surgeries, and is currently undergoing intensive rehabilitation (*id.*).

On September 10, 2025, Petitioner commenced this action by filing a petition and order to show cause of items designated in the petition (NYSCEF Doc Nos. 1, 5). The items sought include the following:

Preservation of, and an immediate inspection with designated experts of, the tree leader/limb/branch that fell and struck Petitioner, which must include permission for the expert to access the leader/limb/branch fell and to take samples/perform tests upon it;

Preservation of, and an immediate inspection with designated experts of, the tree from which the leader/limb/branch fell and struck Petitioner, which must include permission for the expert to access the area of the tree from which the

leader/limb/branch fell (i.e., where it had been attached to the tree), and to take samples/perform tests upon it;

All records relating to the inspection, trimming, pruning and/or maintenance of the tree in question for the period of 2015 through the present time;

Any accident/incident reports including all supporting documentation (photos, videos, witness statements, memoranda, analyses, inspection data, test results, etc.) relating to Petitioner 's accident of July 14, 2025;

Any post-accident inspection reports including all supporting documentation (photos, videos, witness statements, memoranda, analyses, inspection data, test results, etc.) relating to the tree and/or the tree leader/limb/branch involved in Petitioner's accident of July 14, 2025;

Any and all records relating to the removal, alteration, storage and/or disposal of the tree leader/limb/branch involved in Petitioner's accident of July 14, 2025;

Any records, reports, slides, samples, test results or other data/things pertaining to any autopsy of the tree or the fallen leader/limb/branch involved in Petitioner's accident of July 14, 2025 Performed and/or created at any time (whether pre-accident, or post-accident);

Any prior notices of claim, summonses, complaints, answers, bills oof particulars, interrogatories, transcripts and/or expert reports/testimony pertaining to any claim for personal injuries filed by anyone relating to the tree involved in Petitioner's accident of July 14, 2025;

Any prior complaints or notices provided through 311 or otherwise regarding the condition of the tree for the period of July 14, 2015 through the present;

Any Tree Service System records relating to the tree for the period of July 14, 2015 through the present;

Any Tree Work Permits relating to the tree for the period of July 14, 2015 through the present;

Any NYC Street Tree Maps on which the subject tree is designated/appears for the period of July 14, 2015 through the present;

Any and all records relating to the development of and/or existence of tree disease (fungus, vermin/insects, etc.) upon/relating to trees in the area of Jackie Robinson Park in New York, New York for the period of July 14, 2015 through the present;

Records of the New York City Fire Department relating to its response to the accident including 911 call tapes, SPRINT reports/logs, radio/dispatch call

recordings, F.D.N.Y. investigation reports, ambulance call reports, medical records, photographs, and any other information relevant to Petitioner's accident in its possession or control;

Records of the New York City Police Department relating to its response to the accident including 911 call tapes, SPRINT reports/logs, radio/dispatch call recordings, reports, police accident reports, aided reports, investigation/detective reports, photographs, witness statements and any other information relevant to Petitioner's accident in its possession or control; and

Any other materials, documents and/or evidence that is relevant to Petitioner's accident of July 14, 2025 at the intersection of Bradhurst Avenue and West 148th street in New York, New York.

(NYSCEF Doc No. 1, petition ¶ 5).

The court signed the order to show cause on September 18, 2025, setting the return date for October 7, 2025 at 9:30 a.m., and directing personal service on respondents the City of New York (the "City") and the New York City Department of Parks & Recreation (the "Parks Department") on or before September 26, 2025 (NYSCEF Doc No. 5). The order to show cause also indicates that any opposition shall be filed no later than October 3, 2025 (NYSCEF Doc No. 5). On September 22, 2025, Petitioner uploaded affidavits of service to the NYSCEF docket that indicate personal service was effectuated on both the City and Parks Department on September 19, 2025 (NYSCEF Doc Nos. 6-7).

The City opposes the motion and petition (NYSCEF Doc No. 9, aff in opp). In opposition, the City argues that Petitioner is not entitled to pre-action disclosure because the materials sought are not necessary to frame a complaint (*id.* ¶ 7). The City further avers that it has already taken steps to preserve items listed in the petition and that nothing has been alleged that would indicate that preservation is insufficient to warrant compelling pre-action disclosure (*id.* ¶ 10).

DISCUSSION

Under CPLR § 3102 (c), disclosure to aid in bringing an action, preserve information, or aid in an arbitration may be obtained before an action is commenced, but only by court order. Pre-action disclosure is available where a petitioner demonstrates that they have a meritorious cause of action and that the information sought is material and necessary to the actionable wrong, but "is not permissible as a fishing expedition to ascertain whether a cause of action exists" or to explore alternative theories of liability (*Bishop v Stevenson Commons Assocs., L.P.*, 74 AD3d 640, 641 [1st Dept 2010]; *W. Inv. LLC v. Georgeson S'holder Sec. Corp.*, 43 AD3d 333, 333 [1st Dept 2007]). "Thus, while pre-action disclosure may be appropriate to preserve evidence or to identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing" (*Uddin v New York City Transit Auth.*, 27 AD3d 265, 265 [1st Dept 2006]). Pre-action disclosure is not appropriate where the petitioner is already in possession of sufficient facts to frame a complaint (*White v New York City Transit Auth.*, 198 AD3d 557, 557 [1st Dept

2021] [“Thus, she was already in possession of facts sufficient to frame her complaint, and the only purpose of reviewing the video camera recordings would be to explore whether additional causes of action or alternative theories of liability existed, which is not a proper purpose for invoking CPLR § 3102 (c)”].

Here, pre-action disclosure is not appropriate because the petition demonstrates that Petitioner is already in possession of facts sufficient to frame a complaint, including the date and time of the incident, location of the incident, and the entities that own, control, or maintain the subject tree (NYSCEF Doc No. 1, petition ¶ 3; *White*, 198 AD3d at 557 [petitioner in possession of facts sufficient to frame complaint where she knew the date of the accident, the place of the accident, the individuals or entities involved in the accident, and the alleged cause of the accident]). However, Petitioner has demonstrated sufficient cause for preservation of evidence and inspection of the subject tree branch and tree, to the extent that they are still in the possession of the City. Therefore, the petition and order to show cause are granted only to the extent that the City shall preserve all evidence relevant to petitioner’s injury and shall permit petitioner to inspect the subject tree branch and tree, as directed herein.

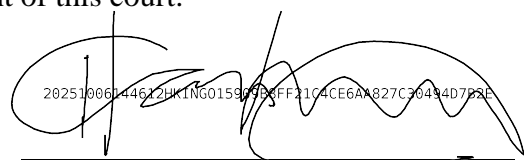
Accordingly, it is

ORDERED and ADJUDGED that the motion for pre-action preservation and disclosure is granted in part and only to the extent set forth herein; and it is further

ORDERED and ADJUDGED that respondents the City of New York and the New York City Department of Parks & Recreation shall immediately take steps necessary to preserve the items listed in the petition, until further order of this court or until October 13, 2026, if a plenary action for damages related to the July 14, 2025 incident described in the complaint is not commenced by that date; and it is further

ORDERED and ADJUDGED that respondents the City of New York and the New York City Department of Parks & Recreation shall allow petitioner Jelani Wilson and their designated agent(s), to inspect and examine the tree limb and tree referenced in the petition, to the extent that these items are in respondents’ possession, control, or custody, or are otherwise available to respondents’, at a date and time convenient to the parties, no later than January 4, 2026.

This constitutes the order, decision, and judgment of this court.


20251006144612HRKINGO1590930FF2104CE6AA827C30494D7B3E
HASA A. KINGO, J.S.C.

10/6/2025
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE