

Lopez v City of New York

2025 NY Slip Op 34591(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 654663/2024

Judge: Hasa A. Kingo

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

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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MARIAH LOPEZ,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF HOMELESS SERVICES, NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION,

Defendant.

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INDEX NO. 654663/2024

MOTION DATE 11/21/2025

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 132

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

In Motion Sequence Number 008, defendants The City of New York, the New York City Department of Homeless Services (“DHS”), and the New York City Human Resources Administration (“HRA”) (collectively, “defendants” or the “City”) move, by order to show cause pursuant to CPLR §§ 2304 and 3103, for an order quashing eight subpoenas submitted by plaintiff Mariah Lopez (“plaintiff” or “Lopez”) on August 26, 2025; issuing a protective order precluding plaintiff from enforcing those subpoenas; and enjoining plaintiff from harassing, video recording, or photographing individuals present at DHS shelters during site visits or for any other purpose, from posting or otherwise publishing any photographs or videos depicting such shelter clients, and from disclosing their names, shelter status, perceived gender, or other identifying information without prior permission of the court. Plaintiff has not submitted opposition papers. For the reasons that follow, the motion is granted in its entirety.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a written settlement agreement that resolved two prior federal actions brought by plaintiff in the Southern District of New York concerning her treatment in the DHS shelter system. Under that settlement agreement (the “Settlement Agreement”), DHS agreed, among other things, to create and maintain designated shelter units for transgender, non-binary, and gender non-conforming (“TGNC”) clients and to afford TGNC clients the option of placement in such units, subject to capacity. Plaintiff commenced this state-court action on or about September 6, 2024, asserting four causes of action sounding in breach of contract and alleging that the City has violated its obligations under the Settlement Agreement. Defendants interposed an answer.

In late 2024, plaintiff moved by order to show cause (Mot. Seq. 001) for a mandatory preliminary injunction compelling the City to contract with a specific private provider (Radio City Apartments) to operate a standalone TGNC shelter. By decision and order dated December 23, 2024, this court denied that application, concluding that defendants were not then in breach of the Settlement Agreement and that the requested injunctive relief was premature on the record presented. In 2025, plaintiff filed a subsequent order to show cause (Mot. Seq. 003), by which she now seeks essentially the opposite relief, namely to shutter a standalone TGNC shelter that the City has opened in furtherance of its Settlement Agreement obligations, based on plaintiff's disagreement with the shelter operator that the City selected through its procurement processes. The City opposed that later application, arguing, among other things, that plaintiff has no contractual or other legal right to dictate the choice of shelter provider, that any challenge to the award of a City contract lies outside the scope of the pleadings and is nonjusticiable in this breach-of-contract action, and that plaintiff lacks standing to challenge the underlying procurement.

In connection with Motion Sequence 003, plaintiff requested an adjournment of the hearing so that she could pursue subpoenas. The court set a deadline of August 20, 2025, later extended to August 25, 2025, for plaintiff to submit subpoenas for the court's review. On August 26, 2025, plaintiff filed eight subpoenas directed to the Commissioner of the Department of Social Services (DSS), the DSS Director of LGBTQIA Affairs, the DSS Agency Chief Contracting Officer and Deputy Agency Chief Contracting Officer, and Sean Coleman, the Chief Operating Officer of Destination Tomorrow, the non-party provider that operates the standalone TGNC shelter at issue. The subpoenas seek broad documentary and testimonial discovery, including extensive communications among senior DSS officials and LGBTQ+ working group members concerning internal deliberations about shelter procurement, years' worth of communications between a DSS official and the Destination Tomorrow COO, documents relating to the City's assessment of why only one proposal was submitted in response to the initial TGNC shelter solicitation, and Destination Tomorrow's financial records and multi-jurisdictional operations, including staff salaries and real property acquisitions.

Defendants contend that these subpoenas have no bearing on plaintiff's breach-of-contract claims and instead reflect an attempt to mount a collateral challenge to the City's procurement decisions and contractual relationship with Destination Tomorrow. In support of the motion, defendants submit, among other things, the affirmation of DSS attorney Edward Cyrus, who describes a September 13, 2023, site visit of a TGNC-designated shelter unit. During that visit, plaintiff allegedly confronted and singled out a shelter client whom she perceived as a "straight, white cisgender male," questioned that person's presence in the TGNC unit, and asserted that the client had a particular mental-health diagnosis, conduct which led DSS staff to curtail the visit. Cyrus further avers that plaintiff has taken photographs and videos of individuals at DHS shelters, submitted those materials to the court, and posted them on social media, while publicly questioning shelter clients' gender identities and their "right" to be housed in TGNC units. According to defendants, such conduct contravenes DHS policy, which prohibits photography and video recording in the common areas of DHS facilities and is inconsistent with DHS's practice of respecting clients' self-identification as TGNC.

Defendants filed the present motion to quash the subpoenas, for a protective order, and for injunctive relief on or about September 4, 2025. Recognizing plaintiff's self-represented status and

the importance of the issues, this court enlarged the time for plaintiff to submit opposition to the motion by orders dated October 9, 2025 and October 31, 2025. Despite those extensions, plaintiff did not file opposition papers. The motion was fully submitted, and marked submitted without opposition, on November 21, 2025.

DISCUSSION

Although the motion is unopposed, the court must independently determine whether defendants have made the requisite showing for the relief requested. Even where a motion is unopposed, it may not be granted as a mere matter of course; rather, the court must be satisfied that the moving party has established a prima facie entitlement to relief as a matter of law (*see Deutsche Bank Natl. Trust Co. v Hall*, 185 AD3d 1006, 1007 [2d Dept 2020]). On this record, defendants have done so.

New York’s disclosure rules are liberal, but not limitless. It is well settled that a party “is not entitled to unlimited, uncontrolled, unfettered disclosure” (*Geffner v Mercy Med. Ctr.*, 83 AD3d 998, 998 [2d Dept 2011]). A subpoena duces tecum is not a roving license to explore whether evidence might exist; rather, its purpose is to compel production of specific documents that are relevant and material to the facts at issue in the pending proceeding (*see Matter of Terry D.*, 81 NY2d 1042, 1044 [1993]). As courts have observed, a subpoena may not be used as an “end-run” around the disclosure devices provided by CPLR article 31, nor as a fishing expedition for the purpose of uncovering new claims or collateral disputes (*see Fabbriatore v Lindenhurst Union Free Sch. Dist.*, 259 AD2d 656, 658 [2d Dept 1999]).

A motion to quash should be granted where the moving party demonstrates that the discovery sought is “utterly irrelevant” to the matters at issue or where the futility of the process to uncover anything legitimate is “inevitable or obvious” (*Matter of Kapon v Koch*, 23 NY3d 32, 34 [2014]). Where a subpoena demand is “palpably improper in that [it is] overbroad, lack[s] specificity, or seek[s] irrelevant or confidential information,” the proper remedy is to vacate the demand rather than attempt to prune it (*Bell v Cobble Hill Health Ctr., Inc.*, 22 AD3d 620, 621 [2d Dept 2005]).

Measured against these standards, the subpoenas here are plainly improper. Plaintiff’s claims in this action sound in breach of contract and are premised entirely on the City’s alleged violation of the Settlement Agreement. Nothing in that agreement affords plaintiff a contractual right to approve, veto, or otherwise control the City’s choice of provider to operate a TGNC shelter. At most, the City agreed to consider plaintiff’s comments, a commitment that the record reflects the City has honored. The pleadings do not assert a cause of action challenging the legality of the City’s procurement processes, nor do they allege facts sufficient to confer standing upon plaintiff to contest the award of a shelter contract to a particular non-party provider. Any such challenge would, in any event, need to be brought in an appropriate Article 78 proceeding and not in this contract action.

The subpoenas, however, are directed squarely to procurement deliberations, personal communications, and the internal finances of a non-party service provider. They seek years of internal correspondence among senior DSS officials, extensive communications between a City

official and the Destination Tomorrow COO apparently to probe a perceived “friendship,” documents reflecting the City’s analysis of the procurement process, and detailed financial records of Destination Tomorrow’s operations in multiple jurisdictions. None of that information bears on whether the City has breached the Settlement Agreement in the manner alleged by plaintiff. The discovery sought is therefore untethered to the material issues raised in the pleadings and is aimed at supporting a collateral challenge outside the scope of this action. Because the underlying legal theory that plaintiff seeks to develop through these subpoenas is foreclosed as a matter of law, no evidence that could be produced in response to the subpoenas would alter the result. This is precisely the kind of futility contemplated by *Kapon* and its progeny, and it warrants quashing the subpoenas outright (*see, e.g., Conte v County of Nassau*, 87 AD3d 558, 559 [2d Dept 2011][quashing nonparty subpoenas where the requested discovery was neither material nor necessary to the pending claims]; *Islip Theaters, LLC v Landmark Plaza Props. Corp.*, 183 AD3d 875, 876 [2d Dept 2020][affirming order quashing subpoenas duces tecum and ad testificandum that sought documents and testimony “utterly irrelevant” to the remaining issues]).

For the same reasons, a protective order is warranted. Under CPLR § 3103(a), this court “may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device” to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice.” Here, compelling compliance with the subpoenas would impose a substantial burden on senior City officials and a non-party provider, would expose confidential and sensitive internal deliberations and financial information, and would invite extensive litigation over collateral procurement issues that lie outside the contract dispute joined in this action. That burden and prejudice, in the context of palpably improper subpoenas, strongly supports entry of a protective order precluding their enforcement. Courts routinely issue such orders where subpoenas are overbroad, lack specificity, or seek irrelevant information (*see Islip Theaters, LLC*, 183 AD3d at 876; *Bell*, 22 AD3d at 621). The court therefore grants the branch of the motion seeking a protective order under CPLR § 3103(a).

The final question is whether defendants have justified the narrow injunctive relief they seek. A party seeking a permanent injunction must demonstrate a violation of a right, the threat of irreparable harm in the absence of an injunction, and a balance of the equities in its favor (*see Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *1234 Broadway LLC v W. Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011]). On this record, those elements are satisfied.

First, defendants have established an ongoing interference with their ability to provide safe and dignified shelter to TGNC clients consistent with DHS policy and the Settlement Agreement. The agreement defines TGNC clients as those who are and/or self-identify as transgender, non-binary, or gender non-conforming. DHS, for sound reasons grounded in safety and affirming practice, does not second-guess clients’ self-identification and instead relies on how clients identify themselves. Plaintiff’s conduct—confronting individual shelter clients about their gender identities, questioning whether they “belong” in TGNC units, recording those interactions, and publicly disseminating images and footage on social media—undermines that framework and destabilizes the shelter environment. To the extent plaintiff seeks to enforce the Settlement Agreement in this action, she may not simultaneously frustrate its performance by engaging in conduct that is fundamentally at odds with its structure and intent (*see ADC Orange, Inc. v Coyote*

Acres, Inc., 7 NY3d 484, 490 [2006][a party cannot rely on the failure of another to perform a condition precedent where that party has frustrated or prevented the occurrence of the condition]).

Second, the harm at issue is irreparable. The recording and publication of photographs and videos of shelter clients, many of whom are TGNC individuals experiencing homelessness and possibly fleeing abuse, discrimination, or other trauma, implicates their privacy, dignity, and personal safety in a way that cannot be undone by money damages. Once images and videos are disseminated online, they can be copied, reposted, and searched indefinitely. Public accusations about an individual's gender identity or mental health, particularly when tied to their presence in a specific shelter, can expose that person to stigma, harassment, or even violence. The law recognizes that harm of this nature—particularly to the privacy rights of vulnerable individuals—is quintessentially irreparable (*see Doe*, 73 NY2d at 751).

Third, the balance of the equities weighs strongly in favor of the requested injunction. The City has a compelling interest in protecting the safety and privacy of shelter clients, ensuring compliance with DHS policies, and maintaining orderly and respectful shelter operations. By contrast, the injunction does not bar plaintiff from pursuing her claims, from advocating for policy changes, or from engaging in lawful, non-harassing expression about the shelter system. It merely restrains her from photographing or recording individuals in shelters in contravention of DHS policies, from publicly disseminating identifying images of shelter clients, and from disclosing those clients' names, shelter status, perceived gender, or other identifying information without Court permission. The relief is carefully tailored to address the documented harms while preserving plaintiff's ability to litigate her case and, more broadly, to speak on matters of public concern in ways that do not compromise the safety of individual shelter residents.

In sum, even in the absence of opposition, the court finds that defendants have made a *prima facie* showing entitling them to all of the relief requested in Motion Sequence 008.

Accordingly, it is

ORDERED that defendants' motion (Motion Sequence No. 008) is granted in its entirety; and it is further

ORDERED that, pursuant to CPLR § 2304, the eight subpoenas filed by plaintiff on August 26, 2025, directed to the Commissioner of the Department of Social Services, the DSS Director of LGBTQIA Affairs, the DSS Agency Chief Contracting Officer and Deputy Agency Chief Contracting Officer, and Sean Coleman, Chief Operating Officer of Destination Tomorrow, together with any duplicate or amended versions of those subpoenas, are quashed in full; and it is further

ORDERED that, pursuant to CPLR § 3103(a), a protective order is issued precluding plaintiff from enforcing, re-serving, or otherwise seeking compliance with the above-described subpoenas, or with any substantially similar subpoenas directed to the same individuals or entities in connection with Motion Sequence No. 003; and it is further

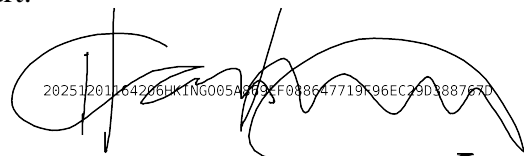
ORDERED that plaintiff is permanently enjoined from harassing, confronting, or otherwise engaging in conduct directed at individuals present at DHS shelters that challenges or interrogates their gender identity, questions their presence in TGNC shelter units, or otherwise undermines their safety and dignity; from video recording or photographing any individuals present in DHS shelters, whether clients, staff, or visitors, while plaintiff visits DHS shelters for site visits or for any other purpose, except as may be expressly authorized in advance in writing by DHS and this court; and from posting on social media or otherwise publicly disseminating any photographs, videos, or other media in plaintiff's possession depicting individuals present at DHS shelters, or disclosing such individuals' names, shelter status, perceived gender, or other uniquely identifying information, without prior permission of this court; and it is further

ORDERED that nothing in this decision and order shall be construed as adjudicating the ultimate merits of plaintiff's substantive claims or defendants' defenses in this action, or as limiting plaintiff's ability to litigate those claims through appropriate, non-harassing means in accordance with the CPLR and the rules of this court; and it is further

ORDERED that defendants shall serve a copy of this decision and order with notice of entry upon plaintiff within twenty (20) days of its entry; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly with respect to Motion Sequence No. 008.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

12/1/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: