

Kohler v West End 84 Units LLC

2025 NY Slip Op 34611(U)

November 26, 2025

Supreme Court, New York County

Docket Number: Index No. 654985/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

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PAULETTE KOHLER, KJERSTI INGA EGGERUD,

Plaintiff,

INDEX NO. 654985/2023

MOTION DATE 07/22/2024,
11/02/2025

MOTION SEQ. NO. 010 023

- v -

WEST END 84 UNITS LLC, ROANNE P. GOLDFEIN,
SANDRA GENTILE, THE BOARD OF MANAGERS OF 500
WEST END AVENUE, ARTURO DEPENA, WILLIAM
BRICKER, JACK PACE, SANDRA LEE, ELIZABETH
ADINOLFI, PHILLIPS NIZER LLP, CHARLES BARBUTI,
YVONNE AGBOBTAEN, RIVERSIDE PREMIER
REHABILITATION AND HEALING CENTER, LUCASZ
KOWALSKI, FIRSTSERVICE RESIDENTIAL NEW YORK,
INC., JOHN AND JANE DOES 1 - 10

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 315, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 503, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 693, 694, 695, 696, 697, 698, 699

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the motions are granted in part.

Relevant Background

These motions arise out of a complex and contentious series of proceedings concerning the treatment of an elderly woman, Ms. Kohler, and her companion, Ms. Eggerud (collectively, the “Plaintiffs”). Defendants West End 84 Units and Roanne P. Goldfein (the “Landlord Defendants”), own the rent-controlled apartment in which Ms. Kohler resides, committed various misdeeds. The building superintendent is Lucasz Kowalski and is managed by the Board of Managers of 500 West End Avenue, with board members including the treasurer Sandra Gentile,

Arturo Depena, William Bricker, Jace Pace (collectively, the “Board Defendants”). The building’s legal representative is Elizabeth Adinolfi who works for the law firm Philips Nizer LLP (collectively, the “PN Defendants”). A short summary of Plaintiffs’ lengthy allegations and claims in this matter is that one or more of the defendants made a false report to the FBI that plaintiff Eggerud was engaged in elder abuse of Ms. Kohler, and that a guardianship proceeding was instituted and carried out in bad faith in order to strip Ms. Kohler of her savings and to regain her rent-controlled apartment.

Prior Proceedings and the NBC News Statement

In March of 2022, the Landlord Defendants, through their counsel the PN Defendants, instituted an Article 81 guardianship proceeding against Ms. Kohler. That trial court granted the petition and appointed defendant Charles Barbuti as guardian. Over the course of the guardianship, Defendant Barbuti made certain statements regarding the FBI elder abuse proceeding. When plaintiff Eggerud and others planned on speaking to NBC News regarding the guardianship placed over Ms. Kohler, the Landlord Defendants through the PN Defendants issued a statement to NBC that referenced an FBI investigation (the “NBC Statement”).

In July of 2023, plaintiff Eggerud appealed a decision by the guardianship court to set aside the power of attorney and health care proxy that she had in relation to Ms. Kohler. In that appeal, the First Department reversed the guardianship court’s decision, overturned the appointment of defendant Barbuti, and found that the Article 81 petition had been submitted with no evidence that Ms. Kohler was incapacitated (the “First Department Guardianship Order”). The matter was remanded and assigned to the Honorable Ta-Tanisha James for an accounting and wrap-up of the guardianship (the “Guardianship Accounting”), a process that is ongoing to date.

This Action's Relevant Procedural History

Plaintiffs filed the original complaint in this matter in October of 2023. Shortly thereafter, Plaintiffs filed a first amended complaint. A second amended complaint was filed in January of 2024. The PN Defendants, along with the other defendants, brought a pre-answer motion to dismiss the second amended complaint, and in that motion raised the Anti-SLAPP dismissal scheme laid out in CPLR § 3211(g). This Court issued an order on the PN Defendants' motion in November of 2024, granting the motion in part and finding that the Anti-SLAPP law was not implicated in the present proceeding. That order was appealed and stayed only as to the PN Defendants. On appeal, the First Department issued an order (the "First Department Order") modifying the dismissal order and remitting the matter back to this court for determination of the scope of Anti-SLAPP discovery. During the pendency of the appeal, Plaintiffs filed a third amended complaint, and the various groups of defendants renewed their pre-answer motions to dismiss as against the third amended complaint.

Discussion

The present issue for these two motions concerns the scope of discovery permitted in the wake of the First Department decision and under CPLR § 3211(g). The First Department Order examined the record regarding the PN Defendants' motion to dismiss and held that the Anti-SLAPP law did apply to this proceeding, and that Plaintiffs had failed to show a substantial basis on the record for their claims. The court then went on to state that "plaintiffs made their request for specified discovery under oath and with a detailed list of the depositions they seek in ascertaining who contacted the FBI, who knew what about the investigation, and when. Plaintiffs seek to substantiate their theory that defendants themselves investigated the FBI investigation to provide a predicate for the guardianship proceeding." It then remanded the matter back to this

Court “for discovery under CPLR § 3211(g)(3) prefatory to determination of the dismissal motion.”

Here, in motion seq. 010 (made in conjunction with the motion to dismiss that was the subject of the First Department Order), Plaintiffs seeks CPLR § 3211(g)(3) discovery from the PN Defendants. And in motion seq. 023, Plaintiffs seeks Anti-SLAPP discovery from the Landlord Defendants. There are three present issues for the Court to decide on these motions. First, what the general scope of discovery Plaintiffs would be entitled to under the Anti-SLAPP law. Then, the Court will need to decide whether the First Department Order limited the general Anti-SLAPP discovery scope to solely the matter of the instigation of the FBI Proceeding, as is urged by various defendants. Finally, if the First Department Order did so limit the scope of Anti-SLAPP discovery, the Court will need to determine to what extent that order and limitation would apply to the non-PN Defendants. For the reasons that follow, the motions are granted to the extent that they seek discovery related to the FBI Investigation and are denied as to the rest.

General Standard for Anti-SLAPP Discovery

CPLR § 3211(g)(3) states that once a motion to dismiss pursuant to the Anti-SLAPP law has been brought, the court “may order that specified discovery be conducted [... which] if granted, shall be limited to the issues raised in the motion to dismiss.” This provision is “unique” and “is tailored to aid a party [to] summon facts essential to justify its opposition to an anti-SLAPP action, claim, cross-claim or counterclaim and thereby show a substantial basis for their claims.” *Reeves v. Associated Newspapers, Ltd.*, 232 A.D.3d 10, 24 [1st Dept. 2024]. A court is not, however, required to grant a § 3211(g)(3) discovery request. *See, e.g., Carey v. Carey*, 220 A.D.3d 477, 478 [1st Dept. 2023]. Although there is limited binding case law interpreting the Anti-SLAPP discovery provision, it appears that generally, once a party is permitted to conduct

§ 3211(g)(3) discovery, the scope would encompass anything specifically identified and necessary to establish a substantial basis for the claims which are at risk of dismissal under the Anti-SLAPP law.

The First Department Order Limited the Scope of Anti-SLAPP Discovery

Complicating the issue of the scope of § 3211(g)(3) discovery in this matter is the First Department Order. Defendants have argued that the order in question limited the scope of permissible discovery during the stay brought forth by an Anti-SLAPP motion to dismiss to the matter of the FBI investigation and who made the initial complaint to the FBI. Plaintiffs argue that they are instead entitled to the full scope of discovery requested in their attorney's affirmation submitted for motion seq. 010, and that they are entitled under the CPLR to conduct discovery on any issue that has been raised by an Anti-SLAPP motion to dismiss. While generally speaking, Plaintiffs are correct, upon review of the First Department Order the Court largely agrees with the various Defendants. The First Department Order holds that the Plaintiffs had made a valid request for discovery as laid out in the statute and noted that Plaintiffs had requested "a detailed list of the depositions they seek in ascertaining who contacted the FBI, who knew what about the investigation, and when." The order further stated that "Plaintiffs seek to substantiate their theory that defendants themselves instigated the FBI investigation to provide a predicate for the guardianship proceeding."

As an initial complication, Plaintiffs originally made two detailed affirmations requesting § 3211(g)(3) discovery in response to the PN Defendants' motion to dismiss, the first in reply at NYSCEF # 170 and the second in sur-reply at NYSCEF # 419. They then later brought motion sequence no. 010, seeking further discovery related to the issue of the PN Defendants' motion to dismiss. The reply affirmation to the motion to dismiss contains a more extensive list of

requested discovery than the list contained in the sur-reply, the last of which largely focuses entirely on the FBI investigation. The Court considers it most likely that the specified attorney affirmation that the First Department referred to is the first, more extensive list in NYSCEF # 170. This affirmation seeks discovery related to the FBI investigation from various parties, but also seeks discovery related to the guardianship proceeding and the decision to remove Ms. Kohler from her apartment and place her in a nursing home.

In only referring to the portions of the affirmation seeking discovery that related to the FBI investigation, and in only referring to Plaintiff's theory relating to the FBI investigation, the First Department appears to have held that only the issue of the FBI investigation was viable for expedited discovery. The Court finds that the First Department Order thus limited the scope of discovery available to oppose the PN-Defendants' motion to dismiss to that relating to the FBI investigation, as contained in the attorney affirmations made in reply to said motion, NYSCEF # 170 and 419. Plaintiffs are entitled to Anti-SLAPP discovery in order to establish a substantial basis for their claims and to oppose the PN Defendants' motion to dismiss, but only on the issue of, as the First Department put it, "in ascertaining who contacted the FBI, who knew what about the investigation, and when." Therefore, to the extent that motion sequence 010 seeks discovery related to the FBI investigation, it is granted. To the extent that it seeks discovery related to other issues and claims, it is denied.

The First Department Order Only Partially Limited the Discovery Sought to Defend Against the Other Anti-SLAPP Motions to Dismiss

In the time since the original determination of the PN Defendants' motion to dismiss, other sets of defendants have filed motions to dismiss the third amended complaint and have also raised the issue of the Anti-SLAPP law. This includes motions filed by the Board

Defendants and the Landlord Defendants. Plaintiffs, in motions seq. 020 and 023, request § 3211(g)(3) discovery in response to these motions. The moving defendants have argued that the First Department Order narrowed the scope of Anti-SLAPP discovery in this entire proceeding to solely the issue of the FBI investigation. Because the First Department Order only considered the record as relating to the PN Defendants' motion to dismiss and only referred to the attorney affirmation(s) submitted in reply to said motion to dismiss that requested Anti-SLAPP discovery, the Court finds that the First Department Order can only partially limit the scope of the rest of the requested Anti-SLAPP discovery. To the extent that Plaintiffs have requested discovery in response to the other Anti-SLAPP motions to dismiss brought in this case that overlap with the non-FBI investigation discovery sought on the PN Defendants' motion to dismiss, such a request is denied pursuant to the First Department Order. To the extent that Plaintiffs have requested new discovery in response to an Anti-SLAPP motion to dismiss brought by the other defendants, the Court will apply a standard CPLR § 3211(g)(3) discovery analysis to the request.

Discovery Motion Sequence 023 Fails to Specify the Reasons and the Essential Facts that They Cannot Present in Opposition to Motion Seq. 018

The Landlord Defendants have moved to dismiss the third amended complaint on several grounds, including the Anti-SLAPP law in CPLR § 3211(g). Plaintiffs opposed the motion but did not request specified Anti-SLAPP discovery in reply to that motion. Instead, they filed the separate motion sequence 023 in order to request said discovery. The Landlord Defendants have opposed this motion, arguing both that the First Department Order limited any available Anti-SLAPP discovery to the issue of the FBI Investigation, and that by failing to present a detailed and sworn affidavit in reply to the motion to dismiss, Plaintiffs forfeited the opportunity to

pursue Anti-SLAPP discovery. They also argue that the affirmation is not specific enough to satisfy the statutory requirements.


As explored above, to the extent that Plaintiffs' motion 023 seeks discovery that was addressed in the reply affirmation to the PN Defendants' motion to dismiss and does not involve the FBI investigation, the motion should be denied on the grounds that the First Department did not consider such discovery to be a valid § 3211(g)(3) request. Also, to the extent that it seeks discovery related to the FBI investigation, the First Department has held that Plaintiffs are entitled to that discovery and therefore the motion should be granted. But because this motion seeks discovery that was not requested on the PN Defendants' motion to dismiss, and from different parties, the Court cannot say that the First Department Order limited this requested discovery solely to the issue of the FBI Investigation. Despite substantial overlap, this motion, and the motion to dismiss it refers to, does involve parties and issues distinct from the issues that the First Department considered. Such discovery could not have been forestalled by the First Department Order. Therefore, the issue becomes whether the discovery requested in this motion that was not requested in the original affirmation in response to the PN Defendants' motion to dismiss has met the CPLR § 3211(g)(3) standard.

The Landlord Defendants argue that Plaintiffs should have filed their request for Anti-SLAPP discovery in reply to the motion to dismiss rather than as a separate motion. But the Court finds such an argument unavailing. CPLR § 3211(g)(3) states that "[t]he court, on noticed motion and upon a showing by the nonmoving party, by affidavit or declaration under penalty of perjury that, for specified reasons, it cannot present facts essential to justify its opposition, may order that specified discovery be conducted." Although there is sparse binding case law analyzing the Anti-SLAPP discovery requirements, the Court does not consider that such a

request must procedurally be brought in reply to the § 3211(g) motion to dismiss instead of as a separate motion. And the fact that Plaintiffs have only submitted a sworn attorney affirmation is not a barrier to Anti-SLAPP discovery, as the First Department Order considered such an affidavit sufficient.

Turning to the issue of specificity, the CPLR states that “specified discovery” may be conducted upon a showing by the nonmoving party that “for specified reasons, it cannot present facts essential to justify its opposition.” Here, in the attorney affirmation requesting depositions and documents related to a lengthy list of topics, Plaintiffs seek depositions of other defendants, documents from and about other defendants, and raise many issues that are related to other defendants. In essence, Plaintiffs pile all the discovery they seek in this matter into the motion for Anti-SLAPP discovery in response to the Landlord’s motion to dismiss (motion seq. 018). CPLR § 3211(g)(3) states that any discovery permitted “shall be limited to the issues raised in the motion to dismiss.” Here, the relevant motion to dismiss is brought by the Landlord Defendants and the issues raised in that motion to dismiss do not, for instance, include topics such as whether or not one of the PN Defendants supported defendant Barbuti’s move of Ms. Kohler to a nursing home during the course of the guardianship. Furthermore, Plaintiffs in this motion do not state the essential facts that they require for their opposition and the reasons why they are unable to present them. In such circumstances, a motion for leave to conduct CPLR § 3211(g)(3) discovery is properly denied. *See, e.g., Rosati v. Altice USA, Inc.*, 225 A.D.3d 909, 910 [2nd Dept. 2024]. While the additional discovery requested in this motion is not barred by the First Department Order holding on the FBI investigation discovery, it fails to meet the standard specified requirements of CPLR § 3211(g)(3). Accordingly, it is hereby

ADJUDGED that motions sequence 010 and 023 are granted to the extent that they seek specified documents and depositions related to the FBI investigation at issue in this case and they are denied as to the rest.


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11/26/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	DENIED		OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	