

<p>Jin Hee Son v 315 Mgt. Corp.</p>
<p>2018 NY Slip Op 32983(U)</p>
<p>November 27, 2018</p>
<p>Supreme Court, New York County</p>
<p>Docket Number: 151382/2018</p>
<p>Judge: Kathryn E. Freed</p>
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<p>This opinion is uncorrected and not selected for official publication.</p>

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

PRESENT: HON. KATHRYN E. FREED PART **IAS MOTION 2**

Justice

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INDEX NO.

151382/2018

JIN HEE SON,

MOTION SEQ. NO.

001

Petitioner,

- v -

315 MANAGEMENT CORP., ZAFIARA REALTY, INC.,

DECISION AND JUDGMENT

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion for

PRE-ACTION DISCOVERY

Upon the foregoing documents, it is ordered that the motion is **granted**.

Petitioner Jin Hee Son (“Son”) moves, pursuant to CPLR 3102(c), for an order directing:

(1) the pre-action deposition of a principal, owner, or employee of 315 Management Corp. and of Zafiara Realty, Inc. (“Zafiara Realty”); (2) these individuals to produce leases, contracts, service agreements, and other documents related to the location and operations of 160 East 116th Street in Manhattan; and (3) that evidence in this case be preserved. After a review of the motion papers and the relevant statutes and case law, the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

Petitioner Son was employed by 315 Management Corp. located at 160 East 116th Street in Manhattan (“the premises”). (Doc. 3 at 1–3.) In an affidavit, Son represents that she was

injured when a metal security gate fell on her and pinned her underneath.¹ (Doc. 2 at 1.) As a result of the incident, Son has been paralyzed from the waist down and has had to relocate from New York to New Jersey so that family members can take care of her. (*Id.* at 2.)

Son has petitioned this Court, pursuant to CPLR 3102(c), for pre-action discovery. Son seeks an order: (1) directing the deposition of a principal, owner, or employee of 315 Management Corp. who would have knowledge of the accident, the premises, and of the maintenance of the security gate (Doc. 3 at 1); (2) directing the deposition of a principal, owner, or employee of Zafiara Realty² who would have knowledge of the accident, the premises, and of the maintenance of the security gate (*id.* at 2); (3) directing the production of any leases, contracts, service agreements, and other documents pertinent to the operations of the premises (*id.*); and (4) directing that all evidence related to Son's accident be preserved (*id.*).

In her affirmation in support of the motion, Son argues that the pre-action discovery sought is necessary to identify the proper defendants and to preserve evidence. (*Id.* at 3.) Son submits photographs that purportedly show crew members of the New York City Fire Department cutting away pieces of the fallen gate in order to extract her. (Doc. 4.) Son's counsel also submits multiple claim letters that were sent in the attempt to identify the parties responsible for the accident. Each letter requests the recipient to "refer this letter immediately to your insurance carrier for its prompt consideration and further attention." (Doc. 5.) Her counsel represents that the letters were addressed to her employer "under various names": 315 Management Corp., Zafiara Realty, Total Beauty 2, and Chun Sop Kim. (Docs. 3 at 3; 5.) To

¹ The date of the accident is not provided in Son's affirmation in support (Doc. 3) or in her affidavit (Doc. 2). Son's affidavit, however, states that subsequent to the accident she was taken to Mt. Sinai Hospital and then afterward transferred to Weill Cornell. (*Id.* at 1.) She was allegedly re-admitted to Mt. Sinai Hospital on June 26, 2017 (*id.* at 2) and was discharged from the hospital on August 14, 2017 (*id.*).

² The papers on this motion suggest that petitioner's counsel does not know the precise identity of petitioner's employer. The affirmation in support says that Son's counsel has "sent letters to her place of employment, under various names, to wit: 315 Management Corp., Total Beauty 2, Zafiara Realty, Inc., Chon Sop Kim." (Doc. 3 at 3.)

date, however, Son and her counsel have not received any response from her employer (Doc. 3 at 3–4), and the representative for the employer’s insurance company has not been willing to provide information regarding other potentially liable parties (*id.*).

In opposition to the motion, 315 Management Corp. asserts that Son’s demand is overbroad and unduly burdensome and that Son cannot bring suit against her employer.³ (Doc. 13 at 2.) 315 Management Corp. further argues that Son has sufficient information to form a complaint and, thus, she is not entitled to pre-action discovery. (*Id.* at 3–4.)

In reply, Son maintains that pre-action discovery is necessary to commence this action because she needs to identify the potential defendants. (Doc. 14 at 2.) Son also argues that her CPLR 3102(c) motion is proper because she has identified a meritorious claim in her petition, in that the security gate fell on her due to negligence. (*Id.* at 3–4.) She further alleges that she is entitled to pre-action discovery because she does not intend to use the information sought to support alternate theories of liability. (*Id.* at 4.)

LEGAL CONCLUSIONS:

CPLR 3102(c) provides that a plaintiff may petition the court to obtain discovery before service of a complaint. (*See* CPLR 3102[c].) “Pre-action discovery may be appropriate to preserve evidence or to identify potential defendants” (*Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [1st Dept 2000].) The provision, however, may not be used by a prospective plaintiff to determine whether a cause of action lies at all. (*Id.*; *see also W. Inv. LLC v Georgeson Shareholder Sec. Corp.*, 43 AD3d 333, 333 [1st Dept 2007] (pre-action discovery impermissible for purposes of exploring alternative theories of liability).)

³ Zafira Realty has not submitted opposition papers.

Therefore, courts have routinely held that petitions for pre-action discovery should be granted only when the petitioner demonstrates a meritorious cause of action and that the information being sought is material and necessary to prosecute the actionable wrong. (See *Holman*, 271 AD2d at 346; see also *Uddin v New York City Tr. Auth.*, 27 AD3d 265, 266 [1st Dept 2006].)

Here, this Court finds that pre-action discovery is warranted. Unlike other cases denying pre-action disclosure petitions, Son has identified what caused her injury. (See *Holzman*, 271 AD2d at 347 (pre-action discovery not granted where plaintiff could not explain what caused him to fall).) In her petition and affirmation in support of the motion, Son repeatedly made clear that she was seeking pre-action disclosure to identify the potential defendants,⁴ which is a permissible use of CPLR 3102(c). (Docs. 1, 3.) (See *Holzman*, 271 AD2d at 347; *Leff v Our Lady of Mercy Academy*, 105 AD3d 1239, 1241 [2d Dept 2017].) Further, Son has submitted an affidavit demonstrating a prima facie cause of action. (Doc. 2.) (See *Matter of Toal v State Is. Univ. Hosp.*, 300 AD2d 592, 593 [2d Dept 2002] (suggesting that affidavits should accompany CPLR 3102[c] petitions).)

Lastly, this Court admonishes 315 Management Corp.'s counsel for the inartful drafting of its opposition papers. The opposition papers state that Son "can identify the exterior stairway in question" (Doc. 13 at 4) and that "722 Henry Street Apartments HDFC failed to use reasonable care in maintaining and supervising the premises" (*id.*). It thus appears that counsel

⁴ This Court searched the New York State Department State Corporation and Business Entity Database, available at https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry, to confirm the existence of 315 Management Corp. and Zafiara Realty. Although it may be contended that Son has sufficient information to form a complaint because she is aware of 315 Management Corp. and Zafiara Realty, she may be precluded from suing those entities because New York Workers' Compensation Law §§ 11, 25, 52, 120, and 200 mandate that workers' compensation is to be an employee's exclusive remedy for a work-related injury that is based on an employer's negligence, absent a showing that the employer engaged in intentional or deliberate tortious conduct. (See *Patterson v Salvation Army*, 203 AD2d 87, 88 [1st Dept 1994] (Worker's Compensation not the exclusive remedy when employee suffered an intentionally inflicted injury).) Thus, discovery is necessary to identify other potentially liable parties.

for 315 Management Corp. did not carefully consider the initial papers and that the aforementioned language was copied and pasted from papers filed in an entirely different matter.

Pre-action discovery is therefore warranted in this instance.

In accordance with the foregoing, it is hereby:

ORDERED AND ADJUDGED that the motion for pre-action discovery of petitioner Jin Hee Son is granted; and it is further

ORDERED that, within 30 days of the uploading of this order to NYSCEF, petitioner's counsel is directed to serve a copy of this order with notice of entry on respondent's counsel and on the Clerk of the Court; and it is further

ORDERED that this constitutes the decision, order, and judgment of this Court.

11/27/2018
DATE

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CASE DISPOSED

DENIED

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NON-FINAL DISPOSITION

OTHER

APPLICATION:

GRANTED IN PART

CHECK IF APPROPRIATE:

SUBMIT ORDER

REFERENCE

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN


KATHRYN E. FREED, J.S.C.