

Bellinger v New York City Hous. Auth.
2021 NY Slip Op 32309(U)
November 15, 2021
Supreme Court, New York County
Docket Number: Index No. 153598/2021
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

JEROME BELLINGER,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, CITY OF NEW
YORK, NEW YORK CITY FIRE DEPARTMENT

Defendant.

-----X

INDEX NO. 153598/2021

MOTION DATE 04/14/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Petitioner seeks pre-action discovery related to a fire at his parents' residence. Petitioner alleges, essentially, that he was visiting his parents at respondent-NYCHA's building when a fire occurred, injuring him and his mother and killing his father. Petitioner, therefore, seeks pre-action discovery and an order requiring NYCHA and the FDNY preserve various records related to the subject apartment where petitioner alleges he was injured. NYCHA opposes contending that petitioner does not have standing to seek pre-action discovery, pursuant to CPLR § 3102. The City and FDNY have not opposed this application.

CPLR § 3102 provides for pre-action discovery where such discovery is material and necessary to a party's claim (*see Matter of Uddin v. New York City Tr. Auth.*, (27 AD3d 265 [1st Dept 2006])). Although plaintiff's injuries clearly resulted from the fire, the cause of the fire remains unknown to petitioner and petitioner is unable to have a fire investigator inspect the premises, as he is not a resident of respondent NYCHA's building. This evidence is necessary to determine the cause of the fire, its contributing factors and, consequently, against whom petitioner will file his claim(s). Without this information, petitioner is unable to draft a complaint. Notably, petitioner is not seeking the instant discovery to determine whether a claim exists or is worthwhile (*id*; *see also Holzman v. Manhattan and Bronx Surface Tr. Operating Auth.*, 271 AD2d 346 [1st Dept 2000])).

To the extent respondents argue petitioner is without standing, such arguments are palpably without merit, petitioner having been injured by the fire, and warrant no further discussion.

Accordingly, it is

ORDERED that the petition is granted in its entirety; and it is further

ORDERED that respondent New York City Fire Department shall produce the unredacted fire marshal fire and incident report and any other records in its possession related to the January 30, 2021 fire at 1738 Lexington Avenue New York, NY within 30 days of notice of entry of this decision and order; and it is further

ORDERED that respondent New York City Housing Authority (NYCHA) is enjoined from altering, tampering, destroying, repairing, overwriting, or otherwise changing evidence related to the January 30, 2021 fire at 1738 Lexington Avenue New York, NY, including but not limited to evidence identified in paragraph 58 of the petition until ordered otherwise by this Court; and it is further

ORDERED that respondent NYCHA shall permit petitioner, or his agents, access to the apartment, building's electrical plant and facilities, and the building's boilers upon 30-days' notice; and it is further

ORDERED that respondent NYCHA shall lock the apartment such that access to the subject residence shall be restricted, except to the parties to this action and any expert they may retain; and it is further

ORDERED that failure to provide or preserve evidence or access, as directed herein, shall result in sanctions, including but not limited to a finding of spoliation and/or contempt, in the Court's sole discretion.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/15/2021
DATE


FRANK NERVO, J.S.C.

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