

Liss v Roosevelt Is. Operating Corp.

2023 NY Slip Op 31788(U)

May 25, 2023

Supreme Court, New York County

Docket Number: Index No. 160779/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART **33M**

Justice

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ROCHELLE LISS,

Petitioner,

- v -

ROOSEVELT ISLAND OPERATING CORPORATION,
GRENADIER REALTY CORP., AND BRIAN WEISBERG

Respondents.

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INDEX NO. 160779/2022
MOTION DATE 02/03/2023
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 21, 22, 23 were read on this motion to/for RELEASE RECORDS.

Upon the foregoing documents, Petitioner Rochelle Liss' ("Petitioner") petition seeking pre-action discovery is granted in part and denied in part. Petitioner initiated this action on December 17, 2022 (NYSCEF Doc. 1). She seeks an order directing the Respondents to produce any and all video footage depicting the trip and fall incident which allegedly occurred on October 28, 2022 on the sidewalk between 2 River Road (Manhattan Park) and P.S./I.S. 217 (645 Main Street, on Roosevelt Island (*id.* at ¶ 2). Petitioner alleges she fell at approximately 12:00 p.m. on October 28, 2022 as a result of missing and broken cobblestones (*id.* at ¶ 3).

Petitioner alleges that the broken cobblestones were located on a sidewalk near 2 River Road, which is part of an apartment complex managed by Respondent Grenadier Realty Corp. ("Grenadier") (*id.*). Allegedly, Petitioner retained Investigator Frank Viggiano ("Mr. Viggiano") to investigate the accident, including whether there were any security cameras which may have captures the accident (*id.* at ¶ 5). On November 8, 2022, Mr. Viggiano allegedly went to Roosevelt Island and observed a surveillance camera affixed to the Manhattan Park building complex in direct view of the accident site (*id.*).

Petitioner alleges that Mr. Viggiano spoke with Respondent Brian Weisberg (“Mr. Weisberg”) who is the director of property management for a building located at 8 River Road (*id.* at ¶ 6). Allegedly, Mr. Weisberg confirmed the location and functionality of the surveillance camera on the date of Petitioner’s accident and agreed to search the video tape and provide any footage that captures the accident (*id.*). However, Mr. Weisberg did not produce any video footage of the accident. Petitioner argues that she has satisfied her burden under CPLR § 3102(c) by demonstrating a meritorious cause of action and that the information sought is material and necessary to her claim.

The Respondents have submitted opposition. Respondent Roosevelt Island Operation Corporation (“Roosevelt”) states that they do not maintain, control, or own any surveillance cameras annexed to the Manhattan Park Building complex, nor does it have any authority over does surveillance cameras (NYSCEF Doc. 18 at ¶¶ 5-6). Roosevelt submitted the affidavit of Gerrald Ellis, who is Deputy General Counsel at Roosevelt, who swears that Roosevelt does not control or own any surveillance cameras in the location Petitioner fell (NYSCEF Doc. 19).

Respondents Grenadier and Weisberg claim the petition is unclear as to where Petitioner fell, and that they have “nothing to do” with the sidewalk located at 645 Main Street. Grenadier and Weisberg also assert that they do not have any surveillance videos documenting any alleged accident (NYSCEF Doc. 21 at ¶ 17). Mr. Weisberg swears that he checked the surveillance video footage of the area of the purported accident at the time of the purported accident but did not observe Petitioner on the footage. Mr. Weisberg also swears that he never received any preservation letters or notices from Petitioner, Petitioner’s counsel, or Petitioner’s investigator, and therefore did not preserve any of the surveillance footage. Respondents claim that the surveillance video footage is typically only stored for 30 days.

CPLR 3102(c) allows for pre-action discovery to “aid in bringing an action.” (*Jane Street Capital, LLC v Merrill Lynch Pierce Fenner & Smith, Inc.*, 39 Misc.3d 1240[A]). Pre-action discovery is appropriate to identify potential defendants or to determine how a complaint should be framed (*id.* citing *Stump v 209 E. 56th Street Corp.*, 212 AD3d 410, 410 [1st Dept 1995]). It has been held, however, that pre-action discovery is not intended to determine whether a cause of action exists (*Holzman v Manhattan and Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [1st Dept 2000]). Moreover, where a petitioner demonstrates that she has sufficient information to enable her to frame a complaint, she will not be entitled to pre-action disclosure (*see Bliss v Jaffin*, 176 AD2d 106 [1st Dept 1991]; *see also Verdon v New York City Transit Authority*, 92 AD2d 465 [1st Dept 1983]).

Here, Petitioner has demonstrated more than sufficient information to frame a complaint for negligence. She knows the entities responsible for maintaining the sidewalk at the site of her accident, she adequately describes where she fell, and she has also identified the allegedly dangerous condition which caused her to fall. Therefore, Petitioner’s relief sought under CPLR 3102(c) is improper. It also appears moot, as Respondent Roosevelt does not control any surveillance cameras in the area of Petitioner’s accident, and Respondents Grenadier and Weisberg have provided sworn testimony that a review of the surveillance footage did not show Petitioner at all. Nor is the video footage necessary for Petitioner to bring her claim, as negligence actions based on trip and falls are frequently brought despite there being no video footage.

To the extent Petitioner seeks an order directing the respondents to preserve any evidence related to the alleged incident in the possession of Respondents, this Court can provide for such relief. It appears no such preservation letter was ever sent.

Accordingly, it is hereby,

ORDERED that the branch of Petitioner's motion which seeks disclosure of any video surveillance footage related to her fall pursuant to CPLR 3102(c) is denied as improper, as Petitioner has already detailed in her affidavit more than sufficient facts with which to frame her Complaint; and it is further

ORDERED that the branch of Petitioner's motion which seeks this Court to direct the Respondents to preserve any evidence in their custody related to the Petitioner's alleged fall on October 28, 2022 is granted. The Respondents are hereby directed to preserve any evidence in their custody which relates to the Petitioner's alleged fall on October 28, 2022; and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order with notice of entry on all parties; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

5/25/2023

DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: