

Matter of Lakkis v Deutsche Lufthansa AG.

2023 NY Slip Op 33957(U)

November 6, 2023

Supreme Court, New York County

Docket Number: Index No. 155837/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART **56M**

Justice

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| In the Matter of | INDEX NO. <u>155837/2023</u> |
| SYLVANA EL LAKKIS, | MOTION DATE <u>08/08/2023</u> |
| Petitioner, | MOTION SEQ. NO. <u>001</u> |

- v -

DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT,
TERMINAL ONE GROUP ASSOCIATION, L.P., and PORT
OF AUTHORITY OF NEW YORK AND NEW JERSEY

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for DISCOVERY - PRE-ACTION.

In this proceeding pursuant to CPLR 3102(c) for pre-action disclosure, the petitioner seeks to restrain the respondents, Deutsche Lufthansa Aktiengesellschaft (Lufthansa), Terminal One Group Association, L.P. (TOGA), and Port Authority of New York and New Jersey (Port Authority), from destroying all video tapes in connection with the petitioner's June 7, 2023 accident, and to compel the respondents to produce all videos, still photos, and documents related to the accident at John F. Kennedy Airport (JFK), and its aftermath. Lufthansa and Port Authority oppose the petition, while TOGA does not. The petition is granted.

The petition, which was initiated by order to show cause, was returnable July 31, 2023, with opposition papers due by July 26, 2023. Lufthansa did not timely oppose the petition, as it submitted its papers on July 31, 2023. Additionally, the petitioner submitted reply papers on July 31, 2023, although a reply is not permitted when a motion or petition is brought on by order to show cause (*see* 22 NYCRR § 202.8-d; Rules of the Justices of the New York County

Supreme Court, Civil Branch, Rule 13[b][IV]; Part 56 Rule II[c]). Nonetheless, in its discretion, the court will consider both the late opposition papers and the reply.

According to the petitioner, she arrived at JFK Terminal One on June 7, 2023, having flown in on a Lufthansa Airlines flight. Upon landing, she was escorted off the airplane in a wheelchair by two individuals. After exiting the airplane and alighting on the jet bridge connecting the airplane with the terminal, the two individuals left the petitioner unattended on the jet bridge, and her wheelchair rolled down the sloped jet bridge. The petitioner fell out of the wheelchair and injured her left arm. The petitioner now seeks the identity of the two individuals and their employers in order to name them in future litigation.

CPLR 3102(c) authorizes a court to permit a party to conduct pre-action disclosure to aid in framing a complaint “and identifying prospective defendants” (*Sims v Metropolitan Transp. Auth.*, 123 AD3d 496, 496 [1st Dept 2014]; see *Walker v Sandberg & Sikorski Corp. Firestone, Inc.*, 102 AD3d 415, 415 [1st Dept 2013]; *Matter of Champion v Metropolitan Tr. Auth.*, 70 AD3d 587, 588 [1st Dept 2010]). A petitioner seeking leave to conduct pre-action disclosure must demonstrate that he or she has a potentially viable cause of action against some person or entity, and that the disclosure sought is material and necessary to proof of an actionable wrong (see *Matter of Woodbridge Structured Funding, LLC v Pissed Consumer*, 125 AD3d 508, 508 [1st Dept 2015]; *Matter of Peters v Sotheby's Inc.* 34 AD3d 29, 34 [1st Dept 2006]; *Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept 1989]). The resort to pre-action disclosure, however, “is not permissible as a fishing expedition to ascertain whether a cause of action exists” in the first instance (*id.* at 36).

The petitioner has established that she has a potentially viable cause of action against one or more of the three respondents to recover for her injuries. She further established that she seeks pre-action disclosure to determine the identity of the two individuals and their employers and, thus, “to determine the identities of the parties” (*Liberty Imports v Bourguet*,

146 AD2d at 536, quoting *Matter of Houlihan-Parnes [Cantor, Fitzgerald & Co.]*, 58 AD2d 629, 630 [2d Dept 1977]).

Moreover, an affidavit by someone with first-hand knowledge of the underlying facts is necessary when seeking pre-action disclosure (*see Afflick v Turner Constr. Co.*, 2011 NY Slip Op 32068[U], *5-6, 2011 NY Misc LEXIS 3709, *6 [Sup Ct, NY County 2011, Jul. 22, 2011]; *see also Nicol v Rotterdam*, 134 AD2d 754, 755 [3d Dept 1987] [attorney affidavit insufficient]).

While the petitioner initially did not submit such an affidavit, she did so in her reply papers that the court has elected to consider in deciding this motion. Hence, CPLR 3102(c) is satisfied and the petition should be granted.

The court notes that Lufthansa submitted an affidavit from its duty manager, Angelique Bhikharie, stating that it does not own, operate, or possess the jet bridge, any video surveillance equipment, or photographs in connection with the incident at issue. Inasmuch as the petitioner is also seeking documents, Lufthansa shall provide that relevant discovery or an affidavit from someone with knowledge that such documents do not exist.

Accordingly, it is

ADJUDGED that the petition is granted; and it is further,

ORDERED that within 20 days after service of a copy of this order with notice of entry upon them, the respondents Deutsche Lufthansa Aktiengesellschaft, Terminal One Group Association, L.P., and Port Authority of New York and New Jersey, shall provide the petitioner with any and all videos, still photos, and documents related to the incident at hand and its aftermath; and it is further,

ORDERED that service of a copy of this order with notice of entry by overnight delivery upon Deutsche Lufthansa Aktiengesellschaft, 1400 RXR Plaza West, Uniondale, NY 11556, Terminal One Group Association, L.P., Terminal One Building 55, Jamaica, NY 11430, and Port Authority of New York and New Jersey, 150 Greenwich Street, New York, NY 10007, *and by*

uploading a copy of this order with notice of entry to the New York State Court Electronic Filing (NYSCEF) system shall be deemed good and sufficient service.

This constitutes the Decision, Order, and Judgment of the court.

11/6/2023
DATE



JOHN J. KELLEY, J.S.C.

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