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### EFSHER, LLC v. HALL

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART C

-----X  
EFSHER, LLC,

Index No. L&T 322692/23

Petitioner,

**DECISION/ORDER**

-against-

Mot. Seq. 01

LOUIS HALL IV,  
"JOHN DOE,"  
"JANE DOE,"

Respondents,

-----X  
HON YEKATERINA BLINOVA, JHC

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion to for discovery.

NYSCEF Doc Nos.: 11 – 17.

Petitioner brought this holdover by a petition dated November 20, 2023, seeking to recover possession of a rent-stabilized apartment, citing nuisance behavior as follows:

"terroristic and frightening confrontations with other tenants, random attacks on building property causing damage to both Respondent-Tenant's apartment and common area doors and walls on a regular basis, habitually propping open the building's front door and allowing unauthorized entry compromising the security of the building, regularly allowing Respondent-Tenant's pet pitbull to roam freely about the halls unleashed, defecating in the public hallways and menacing other tenants, smoking cigarettes and other unknown substances in common areas of the building, leaving excessive trash in the public hallways, and permitting foul odors to emanate from Respondent-Tenant's apartment" (NYSCEF Doc No. 1, Para 10b).

Petition includes several email excerpts from unidentified residents in the building, complaining of nuisance behavior. Respondent, by counsel, served a Demand for a Verified Bill of Particulars demanding dates of each alleged instance of nuisance conduct; names and apartment numbers of complaining tenants; information as to how complaining tenant came to the understanding that it was respondent who was engaged in the objectionable conduct, including whether the conduct was observed personally; and several demands to amplify more general

complaining statements. Petitioner rejected the demand, stating that it exceeds the scope of a Bill of Particulars and attempts to obtain discovery without leave of court. Respondent then moved for discovery pursuant to CPLR § 408. Respondent's Notice to Produce seeks disclosure of "all documents, communications, or emails concerning the alleged behavior in the petition;" dates and times such emails were sent; "copies of screen shots or other images of the text messages, if the same exists, concerning any of the alleged behavior in the petition;" the dates of all the alleged nuisance occurrences; names and apartment numbers of complaining tenants; information as to how complaining tenant came to the understanding that it was respondent who was engaged in the objectionable conduct, including whether the conduct was observed personally; and several demands to amplify more general complaining statements. Petitioner opposes the motion, arguing that the opportunity to cross-examine witnesses at trial obviates the need for discovery in a nuisance proceeding.

Discovery in a summary proceeding is available upon a showing of "ample need" (*New York University v. Farkas*, 121 Misc. 2d 643, 647 [Civ Ct NY Cty 1983]). The aim of litigation is "to achieve a just result and not to spring surprise on one's adversary" (*Zayas v Morales*, 45 AD 2d 610 [2d Dept 1974]). Contrary to petitioner's assertions, discovery is available to respondents in nuisance proceedings where the disclosure is needed to determine information directly related to the proffered defense (*See Nysandy3 Nbp11 Llc v. Thompson*, 72 Misc. 3d 1210(A) [Civ Ct Bx Cty 2021]; *2438 Realty Llc v. Vasquez*, NYLJ, Aug. 14, 2019 at 26 [Civ Ct Bx Cty 2019] ("names and addresses of the witnesses that have filed complaints, as well as the name and addresses of the employees who received those complaints and viewed the videotapes, as well as the deposition of the managing agent which underlie this proceeding, are narrowly-tailored discovery requests which target the disputed facts"); *472-476 Columbus Ave. Llc v. Kretzu*, NYLJ, Jun. 12, 2019 at



35 [Civ Ct Ny Cty 2019] (“opportunity to review the records petitioner has made or collected pertaining to the alleged harassment and to depose petitioner's agent and the complaining neighbor are narrowly tailored discovery requests which target the disputed facts”); *Clinton-178 Towers LLC v. Chapple*, 58 Misc 3d 198, 63 [Civ Ct Bx Cty 2017]; *Peru Leasing v. Foronda*, NYLJ Pg. 42; Vol. 255; No. 80 [2016]; *86 West Corp. v. Singh*, 238 N.Y.L.J. 108 [Civ Ct NY 2007] (in denying petitioner’s motion for a protective order the court held that “[t]names and addresses of witnesses are discoverable when sought to prepare for trial since these complaints form the predicate for this holdover proceeding”).

The Court is not persuaded by petitioner’s argument that “[r]espondents’ allegation that Petitioner is in exclusive possession of information simply is not accurate. Respondent is certainly aware of his own knowledge (or lack thereof) of the alleged activities in his apartment and that he engaged in” (Affirmation in Opposition, NYSCEF Doc No. 15 ¶15). Respondent’s awareness of his own activities may be insufficient to prepare a defense against allegations which respondent maintains are erroneous, false, or otherwise inaccurate.

Petitioner also argues that granting respondent’s motion, particularly that portion seeking identity and apartment numbers of the individual complainants may put those complainants at risk, citing to the threatening nature of some of the interactions alleged. The court notes, however, that there is no such opportunity to protect the identity of witnesses at trial (*See AGLI Realty Co. v. Sanchez*, 236 NYLJ 90 [Civ Ct NY Cty 2006] (“[w]hile petitioner argues that giving names and addresses of its witnesses might put them at risk, the risk will remain once they testify”). Similarly, petitioner’s own logic can be applied to the proposition that disclosure of the complainants’ identities will put them at risk from respondent. Petitioner argues that respondent does not need to be provided with identity of the complainants as respondent should be aware of

his own actions which formed the basis of the complaint. Assuming, *arguendo*, respondent did make the threats to other building residents (NYSCEF Doc No. 15, paragraph 18-20), and is “aware of its own activities in the building,” then respondent is already aware of the identities of the individuals threatened, and withholding them for the purposes of litigation will serve little practical purpose.

However, the court is cognizant of the need to balance potential safety issues with the need for disclosure demonstrated here. Accordingly, respondent’s motion is granted to the extent that petitioner is directed to provide responses to the Notice to Produce (NYSCEF Doc No. 14) within thirty (30) days of the date of this order, except where the Notice seeks disclosure of names and/or apartment numbers of complainants, petitioner shall only respond with the information of those individuals petitioner intends to introduce as its witnesses at trial.

CONCLUSION

Based on the foregoing, respondent’s motion is granted to the limited extent stated above. The proceeding is adjourned to January 23, 2025, 9:30 a.m., Part C, Room 823 for settlement or trial. This constitutes the decision and order of the court.

Dated: New York, New York  
October 23, 2024

  
Yekaterina Blinova, Judge  
Civil Court, Housing Part