

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

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NINTH STREET LLC,

Petitioner,

Index No. 67799/2016

- against -

**DECISION/ORDER**

ELI MAYORKAS, et al.,

Respondents.

----- X  
Present: Hon. Jack Stoller  
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Supplemental Affirmation and Affidavits Annexed...	1, 2, 3
Affidavit and Affirmation in Opposition	4, 5

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Ninth Street LLC, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Eli Mayorkas, the respondent in this proceeding (“Respondent”),<sup>1</sup> seeking possession of 60 East 9<sup>th</sup> Street, Apt. 519, New York, New York (“the subject premises”) on the ground of nuisance. Respondent interposed an answer asserting defenses. Respondent now moves for leave to obtain discovery.

Among the factors a Court is to consider in determining whether a party in a summary

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<sup>1</sup> Petitioner named other respondents in this proceeding, but Eli Mayorkas is the only one who moves for relief on this motion. So, for the sake of convenience only, and without prejudice to the rights of any party, the Court only refers to Eli Mayorkas as “Respondent” in this decision.

proceeding obtains discovery are whether the party has established facts to state a cause of action; whether there is a need to determine information directly related to the cause of action; whether the request is carefully tailored and is likely to clarify the disputed facts; whether prejudice will result from the granting of an application for disclosure; and whether the prejudice can be alleviated by a Court order. Lonray, Inc. v. Newhouse, 229 A.D.2d 440, 440-41 (2<sup>nd</sup> Dept. 1996), New York University v. Farkas, 121 Misc.2d 643, 647 (Civ. Ct. N.Y. Co. 1983).<sup>2</sup>

The defense that Respondent proffers on his motion is essentially a denial of Petitioner's allegations against him. This defense raises a question about whether Respondent can demonstrate a need sufficient to warrant leave to obtain discovery, given that a test of need is whether one party in a summary proceeding has exclusive knowledge of the pertinent facts. See Roger Morris Apt. Corp. v. Varela, 51 Misc.3d 1220(A) (Civ. Ct. N.Y. Co. 2016). Petitioner does not have such exclusive knowledge, as Respondent would have knowledge as to whether or not he engaged in particular conduct.<sup>3</sup> Rather, Respondent argues that he has a different variety of need: that he cannot adequately prepare for trial without the information Respondent seeks in his motion.

The allegations of the petition are detailed. The petition makes allegations that, on two separately-identified dates and two or three unspecified dates, Respondent had his stove on without the flame being on, such that gas emanated from the stove. The notice alleges that

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<sup>2</sup> One other factor is not relevant to this proceeding, whether a *pro se* party will be protected. The party against whom discovery is sought is represented by counsel.

<sup>3</sup> Respondent does not otherwise state in his affidavit why he would not know if he engaged in the conduct Petitioner is accusing him of.

tenants on the fifth floor of the building in which the subject premises is located (“the Building”) notified Petitioner about a smell of gas and that handymen who work in the Building also reported such smells. Annexed to the notice are letters Petitioner sent to Respondent’s counsel contemporaneous with the dates alleged in the notice that reference the same complaints and another letter from an earlier date, which complains of the same condition as having had occurred immediately before the letter was sent. One of the letters referred to a conversation Respondent’s counsel said that she had with a handyman who works in the Building. Petitioner also annexes a photograph of the stove to its notice.

Respondent seeks discovery about the identities of people who complained about a gas smell and the person who took the photograph. The petition and notices incorporated thereto indicate that Respondent knows at least the handyman, if not the neighbors upstairs from the subject premises, which Respondent does not address in his affidavit in support of the motion. Be that as it may, to the extent that Respondent denies the allegations of the petition, a witness list can be minimally prejudicial for Petitioner to produce and is an appropriate discovery device for a nuisance holdover proceeding. 86 West Corp. v. Singh, 2007 N.Y. Misc. LEXIS 8544 (Civ. Ct. N.Y. Co. 2007). However, Respondent has not met his burden of proving ample need for the additional evidence he seeks by his proposed interrogatories, i.e., a description of communications that complainants made about the condition in the subject premises, given the detailed record the predicate notices set forth, complete with letters Petitioner sent Respondent’s counsel contemporaneous with the alleged incidents. The same goes for the discovery Respondent seeks against the cooperative corporation that owns the Building.

Accordingly, the Court grants the motion solely to the extent of directing Petitioner to produce to Respondent a list of the names and addresses of witnesses Petitioner intends to call at trial of this matter on or before October 31, 2016 and denies Respondent's motion in all other respects. The Court calendars this matter for trial, to be held on November 22, 2016 at 9:30 a.m. in part C, Room 844 of the Courthouse located at 111 Centre Street, New York, New York.

This constitutes the decision and order of this Court.

Dated: New York, New York  
October 7, 2016



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HON. JACK STOLLER  
J.H.C.