

Redding v New York City Tr. Auth.

2007 NY Slip Op 30349(U)

March 20, 2007

Supreme Court, New York County

Docket Number: 0105337

Judge: Donna Marie Mills

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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

REDDING, DENIS

INDEX No. 105337/05

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 001

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for Summary Judgment.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1 + 2

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

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Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 3-20-07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

DENIS REDDING,

Plaintiff,

- against -

THE NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

DONNA M. MILLS, J.:

Defendant, New York City Transit Authority (the "Authority") brings this motion pursuant to CPLR §3211 and §3212 dismissing plaintiff's complaint on the grounds that plaintiff has failed to state a cause of action against the Authority and that there are no triable issues of material fact. Plaintiff opposes the motion and cross moves pursuant to CPLR §3124 compelling the Authority to provide plaintiff with various discovery.

BACKGROUND

This is an action to recover monetary damage for personal injuries suffered by the plaintiff as the result of a slip and fall on stairwell P4 within the confines of the Whitehall Street Subway Station on November 8, 2004, at approximately 4:10 p.m. Specifically it is alleged that plaintiff was descending stairwell P4 at which time he slipped on an Authority Metro-Card which was resting on one of the steps of said stairwell causing plaintiff to fall down the steps and onto the platform below. Plaintiff testified at the statutory hearing that there was no other cause for his accident.

Applicable Law & Discussion

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of

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action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (Vamattam v Thomas, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (Andre v Pomeroy, 35 NY2d 361, 364 [1974]).

The Authority maintains that assuming every allegation purported by plaintiff as to how he came to slip is true, the complaint must still be dismissed because the plaintiff failed to show that the Authority had actual or constructive notice of the alleged Metrocard. It is well established that a landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to a third party, the potential that such injury would be of a serious nature, and the burden of avoiding such risk (Basso v Miller, 40 NY2d 233 [1976]). "To prove a prima facie case of negligence in a slip and fall case, a plaintiff is required to show that the defendant created the condition which caused the accident or that the defendant had actual or constructive notice of the condition" (Kalogerides v Citibank, 233 AD2d 298 [2d Dept.

1996]). “To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendants’ employees to discover and remedy it” (Strowman v Great Atlantic & Pacific Tea Co., 252 AD2d 384 [1st Dept. 1998], quoting Gordon v American Museum of Natural History, 67 NY2d 836, 837 [1986]).

The Authority in moving for summary judgment has provided accident reports for November 8, 2004, and submitted a computer search of recorded slips on stairways at the subject station for a year prior and a year after plaintiff’s alleged accident which showed that there were four, including plaintiff. The Authority maintains that the report indicates that only one person fell before the subject date when plaintiff fell, which did not result in a claim, and two others fell in the subject station months after the plaintiff, but only plaintiff fell on stairway P4.

Plaintiff in opposing the motion and in support of its cross-motion to compel discovery, argue that it would be inequitable and premature to grant summary judgment until they have an opportunity to engage in discovery proceedings. The Authority counters however that production of the cleaner’s report renders the need to depose that cleaner irrelevant and all the information that plaintiff claims he needs is contained in the accident report for this incident.

The Authority satisfied its burden on summary judgment by submitting evidence in the form of maintenance records establishing, as a matter of law, that no dangerous situation or defect as alleged by plaintiff was ever reported, investigated or repaired at the location in question in the one-year period immediately prior to this incident. In response, plaintiff’s request for discovery and speculative claims are insufficient to raise a triable

issue of fact as to whether the Authority had been negligent.

Accordingly, it is

ORDERED that the Authority's motion seeking summary judgment dismissing the Complaint is granted; and it is further

ORDERED that the plaintiff's motion to compel discovery is denied ; and It is further

ORDERED that the Clerk is directed to enter judgment in favor of the Authority.

Dated: 3-20-07

ENTER:



J.S.C.

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