

**Opongwiredu v City of New York**

2007 NY Slip Op 31025(U)

May 2, 2007

Supreme Court, Richmond County

Docket Number: 0010620/2003

Judge: Thomas P. Aliotta

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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BARBARA OPONGWIREDU,

Plaintiff,

Part C-2

Present:

Hon. Thomas P. Aliotta

-against-

Decision and Order

THE CITY OF NEW YORK and VERIZON  
NEW YORK, INC.,

Index No. 10620/03

Motion Nos. 1310-001

2489-002

Defendant(s).

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The following papers numbered 1 to 4 were used on these motions on the 7<sup>th</sup> day of March, 2007:

	Pages Numbered
Notice of Motion with Supporting Papers (dated April 24, 2006).....	1
Notice of Cross Motion with Supporting Papers and Exhibits (dated July 31, 2006).....	2
Affirmation in Opposition (dated September 25, 2006).....	3
Reply Affirmation (dated October 20, 2006).....	4

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Upon the foregoing papers, plaintiff’s motion (No. 1310) to compel discovery is granted to the extent provided; the cross motion (No. 2489) for a protective order by defendant THE CITY OF NEW YORK (hereinafter THE CITY) is denied.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained on March 15, 2002, when she tripped and fell on a defective section of roadway after stepping off a New York City Transit Authority bus at the corner of Castleton Avenue and Taylor Street in Staten Island, New York. On January 20, 2006, plaintiff served a Notice for Discovery and

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Inspection seeking THE CITY's records relating to various street inspections and construction projects performed in the area where the accident occurred. This notice also requested copies of any photographs and complaints regarding the subject location, as well as the records of the City's Street Assessment Unit from October 1, 1997 through March 15, 2002 pertaining to the site of plaintiff's fall. Finally, plaintiff requested information regarding a contract allegedly entered into by THE CITY regarding the installation of concrete bus "pads" in order to strengthen the surface of the roadway at bus stops to better withstand the increased pressure of buses coming and going. This final request came as a result of the EBT testimony of a CITY witness who indicated that a project had been established to identify and prioritize those locations most in need of reinforcement as the result of roadway deterioration.

In the present application, plaintiff seeks to compel THE CITY to comply with the above notice to produce the documents requested. According to plaintiff, THE CITY has failed to properly respond thereto or to seek, *e.g.*, a protective order to modify or limit compliance. Plaintiff maintains that without this information she cannot proceed with the litigation.

In its cross motion, THE CITY seeks a protective order claiming that the requested documents are beyond the scope of the preliminary conference order, and are neither material or necessary to the prosecution of this action. According to THE CITY, plaintiff is conducting a "fishing expedition" in the mere hope of uncovering evidence that THE CITY caused or created the roadway defect at the subject location. THE CITY also claims that extensive discovery has already taken place, *i.e.*, that it has already produced two witnesses for deposition, and has provided plaintiff with copies of the various construction permits, milling and paving records on file with its Department of Transportation (DOT) for the area in question. These are said to include the records of the resurfacing that was begun on October 1, 1997. Finally, THE CITY complains that plaintiff's demands are intended to harass THE CITY.

It is uncontroverted that CPLR 3101(d) mandates the full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof. As the Court of Appeals has explained (Allen v. Crowell-Collier Publ Co., 21 NY2d 403, 406-407):

The words, material and necessary, are, in our view, to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason. Thus, CPLR 3101(a) should be construed ... to permit discovery [*e.g.*] of testimony which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable (internal quotation marks omitted).

Here, it is the opinion of this Court that any information relating to THE CITY's knowledge of the effect of bus traffic on the deterioration of the road surface at this particular bus stop is relevant and material to the issues in this case. Whether any such information is sufficient to

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establish actual or constructive notice on the part of THE CITY is not presently at issue. Nevertheless, the testimony of THE CITY's own witness indicates that a program was established, studies were conducted, and contracts signed prior to the date of plaintiff's injury for the identification and installation of reinforced bus "pads" at certain bus stop locations. Under such circumstances, plaintiff should be permitted to discover whether THE CITY had identified this particular bus stop as needing reinforcement, and whether any plan was implemented to correct the condition (*see generally* Wasserman v. City of New York, 802 F.Supp. 849). However, THE CITY's search for all other documents will be limited to the period of two years preceding the date of plaintiff's accident.

Contrary to THE CITY's contention, the mere fact that the information regarding this project was only acquired during discovery provides no reason to restrict further disclosure. The acknowledged purpose of disclosure "is to advance the function of a trial to ascertain truth and to accelerate the disposition of suits" (Rios v. Donovan, 21 AD2d 409, 411).

Finally, while THE CITY's cross motion is untimely, the court retains broad discretion to supervise discovery, *e.g.*, to prevent abuse (*see* CPLR 3101[a]). Hence, even though it does not appear that plaintiff's demand was made for the purpose of creating unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to THE CITY (*see* Eber Bros Wine & Liq. Corp. v. Ribowsky, 266 AD2d 499), the Court has acted to limit the material which THE CITY must produce.

Accordingly, it is

(1) ORDERED that plaintiff's motion to compel discovery is granted to the extent that defendant THE CITY OF NEW YORK is directed to provide plaintiff with copies of the studies, photographs and/or contracts, if any, in its possession relating to the installation of a concrete bus pad at the site of plaintiff's injury; and it is further

(2) ORDERED that, to the extent not already provided, THE CITY shall provide plaintiff with copies of the documents described in paragraphs 1, 2, 8, 10 and 11 of her Notice for Discovery and Inspection dated January 20, 2006; and it is further

(3) ORDERED that her demand for further documents described in paragraphs 3, 5 and 6 of said notice will be deemed satisfied by the production of such documents of like kind as there may be in THE CITY's possession for the period of two years prior to and including March 15, 2002; and it is further

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(4) ORDERED that the copies of the documents required to be produced hereunder shall be provided to plaintiff's attorney within 45 days following the service upon THE CITY of a copy of this order with notice of entry; and it is further

(5) ORDERED that plaintiff's motion is otherwise denied in all respects; and it is further

(6) ORDERED that the cross motion for a protective order by defendant THE CITY OF NEW YORK is denied.

The foregoing constitutes the Decision and Order of the Court.

Law Clerk to notify all parties of this Decision/Order.

Dated: MAY 2, 2007

/s/ \_\_\_\_\_  
HON. THOMAS P. ALIOTTA, J.S.C.

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All sides notified by EVE/pt on 5/2/07

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