

Mele v New York City Tr. Auth.

2007 NY Slip Op 31986(U)

June 28, 2007

Supreme Court, New York County

Docket Number: 0112003/2005

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

MELE, VICTOR

INDEX No. 112003/05

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 001

NEW YORK CITY TRANSIT AUTHORITY, et al.,
Defendants.

MOTION CAL No. _____

The following papers, numbered 1 to 4 were read on this motion for Summary Judgment.

PAPERS NUMBERED

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

1

Answering Affidavits- Exhibits _____

2+3

Replying Affidavits _____

4

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: 6-28-07

Donna M. Mills
J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

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

-----X
VICTOR MELE and SUSAN MELE,

Plaintiffs,

-against-

Index No. 112003/05

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

-----X
DONNA MILLS, J.:

Defendant moves for summary judgment dismissing the complaint.

This is a personal injury action. On February 21, 2005, plaintiff Victor Mele sustained serious injuries as a result of an alleged slip and fall accident on stairway 95B of the 59th Street-Columbus Circle Subway Station located at West 60th Street and Central Park West in New York City. Mr. Mele alleges that he slipped and fell while descending the third stair of the stairway. There was an ongoing snowstorm at the time of this incident, which occurred at 5:50 a.m.

Defendant is accused of failing to properly maintain the stairway, of failing to remove snow, slush and/or ice accumulations prior to the alleged accident, of performing inadequate and improper snow removal operations, thereby increasing the danger of the condition to pedestrians, and of failing to apply proper and sufficient sand and/or other chemicals or minerals such as to dissolve or otherwise remove frozen substances from the stairway.

Defendant moves for summary judgment on the grounds that it had no duty to remove snow and ice from the stairway during an ongoing storm, that it did not create the allegedly dangerous condition, and that it had no notice of any dangerous condition. Defendant relies on a certified weather report for February 21, 2005, the date of the incident, from the National

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Oceanic and Atmospheric Administration. The report shows that on that date, the weather included snow, heavy fog, visibility .25 miles or less, mist and haze. The report also shows that there was approximately five inches of snow and ice on the ground, with precipitation accumulations of 3.5 inches.

Defendant also relies on the deposition testimony of Mr. Mele. In his testimony, Mr. Mele confirms that there was a storm in progress at the time of his accident. He states that it had been snowing heavily throughout the night before, and that it did not stop snowing until later in the morning. Defendant argues that due to the conditions at that time, it had no legal duty to remove the ice and snow accumulations until a reasonable time after the end of the storm. Defendant also argues that the condition of the stairway was the result of an ongoing storm and not caused or created by defendant.

In opposing this motion, plaintiffs contend that it is premature as defendant moved for summary judgment before depositions were completed. Plaintiffs refer to Mr. Mele's affidavit in opposition, in which he states that there was a shoveled path leading down the left side of the stairway to the left of the center divided handrail, which he followed. The path was not illuminated and the subway entrance was dark. The displaced shoveled snow was pushed left and right instead of being removed from the left side of the stairway. On the third descending stair, his foot slid out forward, causing him to fall. He landed on his left knee and slid further down the stairs, stopping face down angled towards the center divider of the stairway.

After falling, Mr. Mele ascertained that there were rectangular ice patches on the stairs, beginning on the third descending stair, in the shoveled path, which had caused him to slip and fall. There were no cones, barricades, signs or warnings posted. After falling, he attests that he

found no sand, salt or other ice melting materials applied to the ice patches in the shoveled path.

Plaintiffs submit the deposition testimony of Gwendolyn Singleton, a station cleaner employed by defendant. Ms. Singleton testifies that at the time of the storm, cleaners employed by defendant were assigned to shovel the snow and put "ice melt" on the snow and ice accumulations. This occurred while the storm was ongoing. Plaintiffs point out that cleaners were told by their supervisors to perform services on the stairways at the time of the storm. Photos of the specific stairway were taken after the storm and are submitted by plaintiffs. The photos reveal shoveled stairs with residual snow present.

Plaintiffs contend that defendant had notice of the condition of the stairway prior to the accident and assumed a duty to clear the condition. They believe that defendant should be held liable for failing to remove the ice and snow in an adequate manner. They also believe that defendant is negligent in failing to warn the public of the defective condition of the stairway.

When a duty to act is voluntarily assumed, the scope of that duty is to perform the act carefully. Holling v Dawn M., Inc., 24 AD3d 1010 (3d Dept 2005). A defendant who voluntarily assumes a duty to act with reasonable care toward others may be held liable for breach of that duty. Van Hove v Baker Commodities, Inc., 288 AD2d 927 (4th Dept 2001).

Plaintiffs are stating that defendant, through its employees, had assumed a duty to clear the defective condition of the subject stairway, even though the storm was ongoing at the time. According to plaintiffs, a failure to clear the stairway in a proper manner led to the alleged accident.

Plaintiffs raise an issue of fact as to whether the attempts by defendant to clear the subject stairway during the ongoing storm led to the alleged accident. Therefore, defendant's motion

shall be denied.

Accordingly, it is

ORDERED that defendant's motion for summary judgment is denied.

DATED: 6-28-07

ENTER:

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J.S.C.

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