

Davis v New York City Tr. Auth.

2007 NY Slip Op 32491(U)

July 31, 2007

Supreme Court, New York County

Docket Number: 0105257/2006

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

DAVIS, THULANI

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

INDEX NO. 105257/06

MOTION DATE _____

MOTION SEQ. NO. 002

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

Replying Affidavits _____ 3+4

CROSS-MOTION: _____ YES NO

FILED
AUG 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 7-31-07

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
THULANI DAVIS,

Plaintiff,

-against-

Index No.

NEW YORK CITY TRANSIT AUTHORITY,

105257/06

Defendant.

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

Plaintiff moves to compel discovery.

This is a personal injury action. Plaintiff claims that on March 10, 2006, while stepping off a No. 1 subway train car, she stepped on the edge of a wooden board on the downtown 96th Street station platform in New York City, twisted her ankle and fell onto the platform, sustaining serious injuries. After considerable deposition testimony, plaintiff moves for an Order compelling defendant to provide the following materials: (1) notices of claim and complaints involving injured subway riders who tripped and fell on the edges of “protection boards” as they exited from subway cars; (2) prior similar accident reports; (3) rules and regulations regarding the installation of “protection boards”; (4) carpentry manual provisions which pertain to the repair of “rubber boards”; (5) lawsuits in which defendant was held liable by plaintiffs who tripped and fell on the edges of “protection boards” when they emerged from subway cars (for the sole purpose of establishing that defendant had actual notice that the “boards” were a tripping hazard). Plaintiff also seeks an extension of the note of issue filing deadline.

Plaintiff states that she is seeking reports, notices of claims and complaints pertaining to all people who were injured by tripping on boards while exiting subway cars. This would

include various areas where “protection boards” were installed, not just the area where plaintiff’s accident occurred. Plaintiff contends that limiting the scope of evidence to plaintiff’s accident would not sufficiently address the issue of defendant’s awareness of the danger which these “boards” posed to unsuspecting riders.

According to plaintiff, directing defendant to produce the aforesaid material would serve justice because, based on the deposition testimony of defendant’s witnesses, the “boards” have long been used throughout the system at the edges of platforms. Defendant’s station supervisor Diane Bryant testified that she had been assigned to a number of subway stations, including the subject one at 96th Street, and that she was responsible for inspecting stations for safety issues. She stated that if she had seen the end of a “protection board” in front of subway doors, she would have reported the condition as unsafe to subway riders.

A carpenter employed by defendant, Gregory McDonald, testified that he had been employed by defendant since 1990 in the Structural Maintenance Department and has installed plywood “protection boards” over broken rubbing boards along platform edges at various stations. Rubbing boards are affixed to the outside edge of a subway platform to protect the train cars from rubbing against the concrete platform. The “protection boards” are said to be uniform in thickness. He claimed to have heard of people being injured when stepping on the edge of covers in front of doorways at the platforms.

Relying on the deposition testimony, plaintiff argues that these “protection boards” have been installed for a number of years by defendant’s employees. Plaintiff therefore demands the discovery to demonstrate that defendant has actual notice of the condition of the “protection boards.”

In opposition to the motion, defendant argues that the demand brought by plaintiff is overbroad and irrelevant. According to defendant, the primary issue is whether the placing of “protection boards” on the downtown 96th Street station platform by defendant, which resulted in plaintiff’s injuries, was an act of negligence. Defendant admits that there is no dispute that it created the condition at the subject platform. Therefore, defendant states that plaintiff need not prove actual notice in this case and that seeking evidence to prove actual notice is irrelevant.

In reply, plaintiff argues that defendant is correct and that she does not have to prove actual notice since defendant created the condition. However, plaintiff contends that defendant denies the danger of the condition. Plaintiff seeks evidence of prior accidents involving the substantially similar condition in order to prove that the condition was dangerous and that defendant knew of the danger.

In a sur-reply, defendant argues that the only possible reason that plaintiff is seeking information regarding other subway station platforms is to prove a design defect. Defendant states that plaintiff cannot do so because she failed to allege a design defect in her notice of claim. A copy of the notice of claim is submitted with defendant’s sur-reply papers.

CPLR 3101(a) favors full disclosure as a means of enhancing the fairness of the trial process. The scope of disclosure should include all information reasonably calculated to lead to relevant evidence. See Spectrum Sys. Int’l Corp. v Chemical Bank, 78 NY2d 371 (1991).

The primary issue involves the creation of an allegedly dangerous condition at the site of the accident. Where defendant actually created the dangerous condition giving rise to a trip and fall action, actual notice is presumed. Rose v Da Ecib USA, 259 AD2d 258 (1st Dept 1999). In determining whether defendant created a dangerous condition, the information sought by plaintiff

must be relevant to the action. Since defendant admits to placing similar "protective boards" at other stations, it is relevant to plaintiff's case that other accidents might have happened at other stations. Plaintiff is entitled to notices of claim, complaints and accident reports involving injured riders who tripped and fell on the edges of "protection boards" as they exited from subway cars. Plaintiff is also entitled to rules and regulations regarding the installation of "protection boards," and manual provisions pertaining to the repair of rubbing boards.

Accordingly, it is

ORDERED that plaintiff's motion to compel discovery is granted to the extent that defendant hereby submits notices of claim, complaints and accident reports involving subway riders who have injured themselves on the edge of "protection boards" while exiting subway cars; and rules and regulations regarding the installation of "protection boards"; and carpentry manual provisions pertaining to the repair of rubbing boards, and is otherwise denied; and it is further

ORDERED that plaintiff's motion to extend the note of issue filing is denied.

DATED: 7-31-07

FILED
AUG 15 2007
NEW YORK
COUNTY CLERK'S OFFICE

ENTER:

[Handwritten Signature]

J.S.C.

DONNA M. MILLS, J.S.C.