

**Ashurova v City of New York**

2007 NY Slip Op 34616(U)

May 11, 2007

Supreme Court, New York County

Docket Number: Index No. 102098/07

Judge: Eileen A. Rakower

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

**EILEEN A. RAKOWER**

PRESENT: \_\_\_\_\_ **J.S.C.**  
*Justice*

PART 5

Ashmova, S

INDEX NO. 102098107

MOTION DATE \_\_\_\_\_

- v -

MOTION SEQ. NO. 01

City

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhlbits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1, 2

3

4

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is granted.

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

**FILED**

MAY 22 2007

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: May 11, 2007



**EILEEN A. RAKOWER** J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION **J.S.C.**

Check if appropriate:  DO NOT POST

REFERENCE

SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
SVETLANA ASHUROVA,

Plaintiff,

Index No.  
102098/07

- against -

THE CITY OF NEW YORK, THE PORT AUTHORITY of NEW YORK and NEW JERSEY, and OTIS ELEVATOR COMPANY

Defendants

Decision  
and Order

Mot. Seq. 001

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HON. EILEEN A. RAKOWER:

**FILED**  
MAY 22 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff brings this action alleging that she sustained personal injuries on February 9, 2006, on an escalator at the Port Authority Bus Terminal. Plaintiff filed her summons and complaint on February 13, 2007, and served Defendant Port Authority of New York and New Jersey (Port Authority) on March 2, 2007. Port Authority now moves to dismiss pursuant to CPLR §§ 3211(a)(2),(7) and (8), stating that Plaintiff failed to meet a condition precedent to suit against it by failing to commence the action within one year of the accrual of the action, as required by New York Unconsolidated Laws § 7107.

N.Y. Unconsolidated Laws § 7107 addresses suits against the Port Authority and is entitled “Limitations of actions; service of notice of claim required.” It states, in pertinent part, “The foregoing consent [to be sued] is granted upon the condition that any suit . . . shall be commenced within one year after the cause of action therefore shall have accrued . . .” Additionally, this one year statutory restriction on commencement of a suit as a condition precedent to such suit must be strictly construed. (*Yonkers Contracting Company, Inc. V. Port Authority Trans-Hudson Corporation*, 93 N.Y.2d 375 [1999]).

Defendant argues that Plaintiff’s alleged injuries occurred on February 9, 2006 and she did not file this action until February 13, 2007, more than one year after the cause of action accrued. Plaintiff argues that General Construction Law section 20 provides that the “clock” on the restriction on commencement of a lawsuit against

Port Authority did not begin to run until the day after the cause action accrued. Therefore, she argues, because February 10, 2007, was a Saturday and Monday, February 12<sup>th</sup> was a Court holiday, this action was timely filed on Tuesday, February 13, 2007. Defendant counters that they do not dispute Plaintiff's assertion that the one year time period did not start running until February 10, 2006 but pursuant to General Construction Law § 58, one year is defined as 365 days and, therefore, Plaintiff's time expired before she filed against Port Authority.

General Construction Law § 58 is entitled "Year in statute, contract, public or private instrument" and it states, "[t]he term [year] in a statute, contract or any public or private instrument, means 365 days . . ." Here, Plaintiff's alleged accident occurred on February 9, 2006. The time period for filing against Port Authority began on February 10, 2006, and expired on the 365<sup>th</sup> day, Friday, February 9, 2007. Accordingly, Port Authority's motion must be granted.

ORDERED that defendant Port Authority of New York and New Jersey's motion to dismiss Plaintiff's action is granted.

All other relief requested is denied.

This constitutes the decision and order of the Court

Dated: May 11, 2007

  
\_\_\_\_\_  
Eileen A. Rakower, J.S.C.

**FILED**

MAY 22 2007

NEW YORK  
COUNTY CLERK'S OFFICE