

**Menezes v Metropolitan Transp. Auth.**

2008 NY Slip Op 30678(U)

March 4, 2008

Supreme Court, Queens County

Docket Number: 0016748/2006

Judge: Orin R. Kitzes

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ORIN R. KITZES  
Justice

IA Part 17

\_\_\_\_\_  
EDUARDO MENEZES, x

Plaintiff,

- against -

METROPOLITAN TRANSPORTATION  
AUTHORITY, et al.,

Defendants.

\_\_\_\_\_  
METROPOLITAN TRANSPORTATION x

AUTHORITY, et al.,

Third-Party Plaintiffs,

- against -

CITY OF NEW YORK,

Third-Party Defendant.

\_\_\_\_\_  
x

The following papers numbered 1 to 10 read on this motion by plaintiff, pursuant to CPLR 3211(b), dismissing defendants' third and fourth defenses.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Answering Affidavits - Exhibits.....	5-7
Reply Affidavits.....	8-10

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff, Eduardo Menezes, commenced this action to recover damages for personal injuries he allegedly sustained on February 13, 2006, when he slipped and fell on snow and ice on a public sidewalk located at 48<sup>th</sup> Street, between Barnett and

37th Avenues in Queens County. The sidewalk in question ran underneath a railroad overpass and real property owned and operated by defendants.

To dismiss a defense pursuant to CPLR 3211(b), the movant must demonstrate that the defense is either not stated, or has no merit. Plaintiff has successfully established that defendants' third and fourth defenses must be dismissed.

Defendants' third affirmative defense asserts the protection afforded by Railroad Law §93, which provides in pertinent part:

When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad corporation, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated...

This portion of Railroad Law §93 was discussed in a case bearing facts similar to those presented herein. In Guest v Consol. Rail Corp., 116 Misc2d 260 (1981), *revd in part* 109 AD2d 1080 (1985), the plaintiff therein was injured when he was forced to walk in the street, because the sidewalk was covered with snow. The subject sidewalk was located below a railroad overpass controlled by Consolidated Rail Corporation. The lower court observed that Railroad Law §93 charged the municipality with the maintenance of sidewalks so located, and determined that unless Consolidated Rail Corporation, as the abutting landowner, created the hazardous condition, it could not be held liable for injuries resulting from the improper maintenance and upkeep of the sidewalk. While Guest was subsequently appealed, the Supreme Court only partially reversed the lower court's findings, and did not disturb the lower court's ruling with respect to Consolidated Rail Corporation's potential liability.

Subsequent legislation, however, affects a substantially different outcome given the similar facts in the instant action. Generally, an owner or lessee of property abutting a public sidewalk is not obligated to remove snow and ice accumulations upon the sidewalk in front of the premises, unless a statute or ordinance specifically imposes tort liability for failing to do so. (Rao v Hatanian, 2 AD3d 616 [2003].) Prior to September 14, 2003, the effective date of Administrative Code of City of New York § 7-210, there were no such statutes in New York City. (Klotz v

City of New York, 9 AD3d 392 [2004].) Administrative Code of City of New York § 7-210(b) provides in relevant part:

Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. (Emphasis added.)

In determining the applicability of Administrative Code of City of New York § 7-210(b) to defendants, the court now addresses defendants' fourth affirmative defense which posits that defendants are exempt from Administrative Code of City of New York § 7-210(b) by virtue of Public Authorities Law § 1266(8). Public Authorities Law § 1266(8) states in relevant part:

The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority and its subsidiaries, and New York city transit authority and its subsidiaries. Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, or any of their activities or operations. The local laws, resolutions, ordinances, rules and

regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or regulation of the authority or its subsidiaries, or New York city transit authority or its subsidiaries, shall not be applicable to the activities or operations of the authority and its subsidiaries, and New York city transit authority, or the facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, except such facilities that are devoted to purposes other than transportation or transit purposes.

It has been routinely held that these defendants are "not exempt from local laws that do not interfere with [their] function and purpose..." (See Bumpus v New York City Tran. Auth., 18 Misc3d 1131(A), 3 [2008]; see Echevarria v New York City Tran. Auth., 45 AD3d 492 [2007].) Compliance with a statute setting forth liability and minimal standards for sidewalk maintenance hardly interferes with defendants' function and purpose, especially where public and commuter safety should be tangential to defendants' mission. (See Huerta v New York City Tran. Auth., 290 AD2d 33 [2001].)

Moreover, since Administrative Code of City of New York §7-210(b) specifically provides that it is applicable "notwithstanding any other provision of law", there is no question that it supercedes Public Authorities Law § 1266(8) and obligates defendants to maintain the subject sidewalk.

Accordingly, plaintiff's motion is granted, and defendants' third and fourth affirmative defenses are hereby dismissed.

Dated: March 4, 2008

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J.S.C.