

Hall v New Jersey Tr.
2013 NY Slip Op 33188(U)
January 16, 2013
Supreme Court, New York County
Docket Number: 113945/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

LISA HALL,

Plaintiff,
-v-
NEW YORK TRANSIT,

Defendant.

INDEX No. 113945/11
MOTION DATE
MOTION SEQ. NO. 001
MOTION CAL NO.

The following papers, numbered 1 to were read on this motion to Dismiss.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1, 2
Answering Affidavits- Exhibits 3
Replying Affidavits 4

CROSS-MOTION: YES NO

FILED

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

JAN 23 2013

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/16/13

Donna M. Mills
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
DONNA M. MILLS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

LISA HALL,

Plaintiff,

- against -

NEW JERSEY TRANSIT,

Defendant.

INDEX NO.
113945/11

DECISION/ORDER

DONNA M. MILLS, J.:

Moving Defendant, New Jersey Transit seek an order pursuant to CPLR § 3211(a)(2) dismissing the Plaintiff's Verified Complaint in its entirety on the grounds that this Court lacks subject matter jurisdiction pursuant to the principles of comity. Plaintiff, Lisa Hall opposes the motion.

BACKGROUND

Plaintiff alleges that she fell on an overcrowded escalator leading down to one of the New Jersey transit tracks at New York Penn Station on January 1, 2011. This action involves allegations of negligence against the New Jersey Transit in the use and operation of its trains while loading passengers at Penn Station.

Plaintiff was and continues to reside in New Jersey. New Jersey Transit is a public transportation system that serves not only the State of New Jersey but also New York, Orange and Rockland Counties in the State of New York. New Jersey Transit argues that although the venue might technically be proper in this Court because Plaintiff's alleged accident occurred in New York, it contends that the principles underlying the doctrine of comity strongly support a finding by this Court that it should decline to exercise such subject matter jurisdiction.

FILED

JAN 23 2013

NEW YORK
COUNTY CLERK'S OFFICE

APPLICABLE LAW & DISCUSSION

There is no question that this Court has subject matter jurisdiction over the action. The Supreme Court has broad jurisdiction that is generally unlimited and unqualified. Kagen v. Kagen, 21 N.Y.2d 532 (1968). The Supreme Court is permitted to decide all causes of action unless its jurisdiction has been specifically proscribed. Thrasher v. United States Liability Ins. Co., 19 N.Y.2d 159 (1967); and Condon v. Associated Hospital Service, 287 N.Y. 411 (1942). Defendant in its moving papers readily admits that venue is technically proper in this Court, but asks this court to consider the principle of comity to dismiss the case under the theory that this State should voluntarily defer to the law of New Jersey to promote uniformity of decision and harmony amongst the states.

“The doctrine of comity is not a rule of law, but one of practice, convenience and expediency. It does not of its own force compel a particular course of action. Rather, it is an expression of one [s]tate's entirely voluntary decision to defer to the policy of another” (Ehrlich-Bober & Co. v. University of Houston, 49 N.Y.2d 574, 580, 427 N.Y.S.2d 604, 404 N.E.2d 726 [1980] [internal quotation marks and citations omitted]; see De Rose v. New Jersey Tr. Rail Operations, 165 A.D.2d 42, 44–45, 565 N.Y.S.2d 305 [1991]). Thus, a determination of whether New York is to give effect to another state's governmental acts is based on whether such acts are consistent with New York's public policy (see Crair v. Brookdale Hosp. Med. Ctr., Cornell Univ., 94 N.Y.2d 524, 528–529, 707 N.Y.S.2d 375, 728 N.E.2d 974 [2000]; Ehrlich-Bober & Co. v. University of Houston, 49 N.Y.2d at 580, 427 N.Y.S.2d 604).

This Court declines to exercise its discretion by dismissing the action. In light of the fact that this alleged accident occurred at New York's Penn Station, I find that New York has significant interests in protecting the residents and visitors who travel to and from this city via Penn Station. The mere fact that plaintiff is a New Jersey resident and the New Jersey Transit is a New Jersey “corporation”, does not tip the balance in this Court's

consideration in determining whether New Jersey is the preferred.

Accordingly, it is

ORDERED that the motion of Moving Defendant to dismiss the complaint herein is denied in its entirety

Dated: 1/16/13

ENTER:

Donna Mills

J.S.C.

DONNA M. MILLS, J.S.C.

FILED

JAN 23 2013

NEW YORK
COUNTY CLERK'S OFFICE