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| <b>Ramirez v New York City Tr. Auth./MTA</b>                                                                                                                                                                                                                     |
| 2016 NY Slip Op 31580(U)                                                                                                                                                                                                                                         |
| August 19, 2016                                                                                                                                                                                                                                                  |
| Supreme Court, New York County                                                                                                                                                                                                                                   |
| Docket Number: 159482/2014                                                                                                                                                                                                                                       |
| Judge: Michael D. Stallman                                                                                                                                                                                                                                       |
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

**PRESENT: Hon. MICHAEL D. STALLMAN**  
*Justice*

**PART 21**

**ROSA RAMIREZ,**

**INDEX NO. 159482/2014**

**Plaintiff,**

**MOTION DATE 6/23/16**

**- v -**

**MOTION SEQ. NO. 001**

**THE NEW YORK CITY TRANSIT AUTHORITY/MTA,**

**Defendant.**

The following papers, numbered 13-31, 33-62, were read on this motion to strike answer and cross motion for protective order

|                                                                      |                            |
|----------------------------------------------------------------------|----------------------------|
| Notice of Motion —Affirmation — Exhibits A-P —Affirmation of Service | <b>No(s). <u>13-31</u></b> |
| Notice of Cross Motion—Exhibits A-Q—Affidavit of Service             | <b>No(s). <u>33-51</u></b> |
| Affirmation in Opposition to Cross Motion—Affidavit of Service       | <b>No(s). <u>52-53</u></b> |
| Affirmation in Opposition to Motion — Exhibits A-C                   | <b>No(s). <u>54-57</u></b> |
| Reply Affirmation                                                    | <b>No(s). <u>58</u></b>    |
| Affirmation in Further Support of Cross Motion — Exhibits A-C        | <b>No(s). <u>59-62</u></b> |

**Upon the foregoing papers, it is ordered that plaintiff's motion to compel and defendant's cross motion for a protective order are granted in part as follows:**

**(1) within 30 days, defendant shall provide to plaintiff a copy of the highlighted portions of pages 9, 24 and 29 of the 2012 Condition Assessment Inspection Program report; and**

**(2) the remainder of plaintiff's motion to compel and defendant's motion for a protective order are otherwise denied.**

**(Continued...)**

Plaintiff alleges that, on February 7, 2014, plaintiff tripped and fell due to hazardous conditions of subway stairs identified as stairway P3 of the C train subway station at 163<sup>rd</sup> Street and Amsterdam Avenue in Manhattan.

Plaintiff served notices for discovery and inspection dated February 5, 2015 and August 17, 2015. (Kauffman Affirm., Exs D, I.) Plaintiff asserts that defendant did not fully respond to twelve items demanded in the notices for discovery and inspection.

Plaintiff now moves for an order striking defendant's answer, or in the alternative, for an order precluding defendant from offering evidence at trial, or compelling defendant to provide the discovery demanded.

Defendant opposes the motion and cross-moves for a protective order vacating items 1 and 3 of plaintiff's notice for discovery and inspection dated February 5, 2015, and items 4 and 5 of plaintiff's notice for discovery and inspection dated August 17, 2015. Items 1 and 3 demanded the name, position, and last known addresses of all station agents and cleaners at the 163<sup>rd</sup> Street subway station for the two year period prior to the alleged incident; items 4 and 5 sought unredacted copies of a 2012 Condition Assessment Inspection Program (CAIP) report for the 163 St-Amsterdam Av subway station.

According to Siraj Attia, the Program Manager of NYCTA's Capital Program Management Department, a survey/report was prepared by an outside consultant, AECOM, in connection with defendant's "Condition Assessment Inspection Program." (Berskon Affirm., Ex I [Attia Aff. ¶ 7].) The purpose of the survey was to "visually evaluate the overall condition of components within a station in order for Capital Planning & Budget to assess whether that station will be included in the next Capital Program." (*Id.*)

(Continued...)

Christopher Higgins, NYCTA's Chief of Counterterrorism/Command, Control and Operations Division of NYCTA's Department of Security states that the NYCTA is concerned that criminals and/or terrorists might use information in the CAIP report, which has details about "not only public, but also non-public infrastructure and areas of the subway system." (Berkson Opp. Affirm., Ex C [Higgins Aff.] ¶ 7.)

It is undisputed that stairway P3 is a public area and that the discovery ordered here therefore does not implicate any such security considerations.

The Court held conferences to discuss the motion and cross motion on June 2 and June 23, 2016. At the June 2<sup>nd</sup> conference, plaintiff's motion and defendant's cross motion were partially resolved pursuant to a so-ordered stipulation dated June 2, 2016. At the June 23<sup>rd</sup> conference, the discovery issues in plaintiff's motion and defendant's cross motion were further narrowed to production of the 2012 CAIP report.

It is undisputed that defendant previously provided redacted portions of this report to plaintiff. (See Berkson Affirm., Ex G.) Although defendant objected in its papers to *in camera* review of the 2012 CAIP Report (Berkson Opp. Affirm. ¶ 19), defendant did submit the entire, unredacted 2012 CAIP report to the Court for an *in camera* inspection, and plaintiff and defendant understood that only those parts of the report that mentioned stairway P3 could be considered relevant or reasonably calculated to lead to admissible evidence in this action.

The pages of the 2012 CAIP report submitted for *in camera* inspection are numbered 1-119. Having reviewed the unredacted 2012 CAIP report, the Court finds that the following pages of the 2012 CAIP report contain relevant information about stairway P3:

(Continued...)

**Ramirez v New York City Tr. Auth./MTA, Index No. 159482/2014****Pages 1-3 (no redaction)****Highlighted portions only of Pages 9, 24, 29, 30, and 62<sup>1</sup>**

**Defendant previously provided to plaintiff almost all of the pages discussed above, with the appropriate redactions, except for pages 9, 24 and 29. (See Berkson Affirm., Ex G.) Thus, the Court directs defendant to provide only the highlighted portions of pages 9, 24 and 29 to plaintiff, within 30 days.**

**Defendant's attorney must contact the Part Clerk of IAS Part 21 at 646-386-3738 to arrange for pickup of the *in camera* documents.**

Dated: 8/19/16  
New York, New York

, J.S.C.

1. Check one:.....

2. Check if appropriate:..... MOTION IS:

3. Check if appropriate:.....

☐ CASE DISPOSED☒ NON-FINAL DISPOSITION☐ GRANTED ☐ DENIED☒ GRANTED IN PART ☐ OTHER☐ SETTLE ORDER☐ SUBMIT ORDER☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

HON. MICHAEL D. STALLMAN

<sup>1</sup> The highlighted portions appear on photocopies of that the Court made of these pages, which will be included among the *in camera* materials to be returned to defendant.