

Realmuto v Metropolitan Transp. Auth.

2019 NY Slip Op 32459(U)

August 21, 2019

Supreme Court, New York County

Docket Number: 152205/2019

Judge: Robert D. Kalish

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

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

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RICHARD REALMUTO,	INDEX NO. <u>152205/2019</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>001</u>

METROPOLITAN TRANSPORTATION AUTHORITY and
MTA LONG ISLAND RAIL ROAD,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for SUMMARY JUDGMENT & CHANGE VENUE

Motion for summary judgment by Defendants Metropolitan Transportation Authority (“MTA”) and MTA Long Island Rail Road (“LIRR”) (collectively, “Defendants”), pursuant to CPLR 3212 to dismiss the complaint as against MTA, and upon granting summary judgment, to change the place of trial to Nassau County, pursuant to CPLR 503, 505 (a), 510 and 511, is denied.

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form.” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985].) “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” (Id.) Once this showing has been made, the burden shifts to the nonmoving party to produce “evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.” (*Zuckerman*, 49 NY2d at 562.) “On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012].) “Under this summary judgment standard, even if the jury at a trial could, or likely would, decline to draw inferences favorable to the plaintiff . . . the court on a summary judgment motion must indulge all available inferences . . .” (*Torres v Jones*, 26 NY3d 742, 763 [2016].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*Rotuba Extruders v Ceppos*, 46 N.Y.2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 A.D.2d 224, 226 [1st Dept 2002].)

In the instant action, Plaintiff Richard Realmuto alleges that he was injured at the County Line Press, Long Island Rail Road Station (“the County Line Station”)—located in Nassau County—when he fell into the gap between the platform and the train. In the complaint, Plaintiff alleges that his injuries were caused by “the carelessness and negligence of the Defendants, their agents, servants and/or employees, in their ownership, operation, management, maintenance, inspection, repairs, supervision and/or control of the aforementioned premises, including but not limited to the trains, railroad tracks and platforms located thereat.” (Affirm in Supp., Ex. A [Complaint] ¶ 40.)

On the instant motion, Defendants move for summary judgment, dismissing the complaint as against the MTA arguing that under well-established precedent the MTA does not operate, maintain, and control the railroad facilities owned by the LIRR. (Affirm in Supp. ¶¶ 6-12.) Defendants assert that the subject station is owned, operated and controlled by the LIRR—a separate and distinct entity from the MTA—and submit an affidavit from an MTA records keeper in support of this position. (Affirm in Supp. ¶ 21; Ex. C [Goldberg Aff.]; *but see* Answer by LIRR [NYSCEF Doc. No. 3] ¶¶ 3, 5 [denying that LIRR operated, maintained, managed, controlled, supervised and repaired County Line Station]; Complaint ¶¶ 27-32.)

Defendants argue that, upon dismissal against the MTA, the action must be transferred to Nassau County, because, pursuant to CPLR 505 (a), an action against a public authority must be tried in the county of the public authority’s principal place of business—which for the LIRR is Nassau County.

In opposition, Plaintiff asserts that he is a blind individual, and that his accident was caused, at least in part, by a lack of “tactile, ‘nipped’ tiles on the platform demarking the platform edge.” (Affirm in Opp. ¶¶ 13, 18; Aff in Opp. ¶¶ 2, 10.) Plaintiff’s counsel asserts that although other LIRR stations have these nipped tiles on the platform edge, the County Line’s platform edge is merely painted yellow. (Affirm in Opp. ¶ 18.) Plaintiff’s counsel asserts that, pursuant to CPLR 3212 (f), discovery is needed to reveal the extent of the MTA role’s role in “the design of the platform and its lack of safety features, the existence of a large gap in the area of the fall, issues with compliance with the Americans with Disability Act of 1990 and the hiring and contracting with competent architects/designers to make the station accessible and safe for the blind.” (Affirm in Opp. ¶ 24.) In support of Plaintiff’s belief that discovery will reveal the MTA’s role in the alleged design flaw, Plaintiff points to various literature from the MTA—including press releases and statements from MTA officials—discussing the MTA’s efforts to make transportation infrastructure more accessible and safer for individuals with disabilities. (*See* Affirm. in Opp., Exs. D-G.)

In reply, Defendants assert that Plaintiff is arguing “that there should be some sort of vicarious liability due to the design of the LIRR facility.” (Affirm in Reply ¶ 3.) Defendants assert that the MTA and the LIRR are distinct entities and that they have conclusively established that the MTA does not own the County Line Station. As such, Defendants argue that the case against the MTA should be dismissed and, upon dismissal, venue should be transferred to Nassau County.

Notwithstanding Defendants' assertions, Defendants merely submit an affidavit of a "Senior Transaction Manager" from the MTA who states that he "reviewed the records for MTA's real estate holdings," and based upon said review and his "extensive knowledge regarding real estate transactions and holdings of the MTA," he "attest[s] that [the] MTA did not own, operate, maintain, occupy or control the subject premises known as Country Line Press LIRR Station." (Goldberg Aff. ¶ 1-7.) This seven-paragraph affidavit does not attach the documents which the affiant relied upon in making his conclusion; nor does it provide some indication as to the type of documents that were reviewed. Moreover, this affidavit does not affirmatively state which entity owns, operates, and controls the County Line Station.

Furthermore, the MTA's and LIRR's own answers—which are not verified by a person with knowledge—conflict as to who owns the County Line Station. For example, whereas the LIRR's answer admits that it owned of the County Line Station, so does the MTA's answer. (Affirm in Supp., Ex. B [Answer by MTA] ¶ 3; Answer by LIRR ¶ 1, 3; *compare* Complaint ¶¶ 26.)¹

Notably, also, the LIRR's answer – submitted by the same counsel – denies that it operated, maintained, managed, controlled, supervised and repaired County Line Station. (See Answer by LIRR [NYSCEF Doc. No. 03] ¶¶ 3, 5; *compare* Complaint ¶¶ 27-32.) Furthermore, the LIRR also denies that it is a subsidiary of the MTA. (Id. ¶ 4.) As such although it is generally understood that "each subsidiary is responsible for the maintenance and repair of its own facilities, and the functions of the MTA do not include the operation, maintenance and control of any facility," the very subsidiary that theoretically would be responsible denies such responsibility. (*Noonan v Long Is. R.R.*, 158 AD2d 392, 393 [1st Dept 1990].) Furthermore, this Court recognizes the well-established precedent that "as a matter of law, that the functions of the MTA with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility." (*Revella v Metro N. Commuter R.R.*, 172 AD3d 462, 463 [1st Dept 2019].) However, such established precedent does not excuse the MTA and its subsidiaries from meeting their prima facie burden on summary judgment motions, especially when the MTA's and its subsidiary's pleadings raise issues of fact on their face as to the entity that owns, controls, operates and maintains the subject station.

Because this Court finds that Defendants have failed to establish prima facie entitlement to summary judgment, this Court need not consider the question of whether it would deny the motion under Plaintiff's assertion in his opposition papers that the complaint states a cause of action for negligent design as against the MTA. Plaintiff has submitted literature from the MTA suggesting that it has some role in the design of LIRR stations. Whether Plaintiff will be able to sustain a claim against the MTA for negligent design remains an open question.²

¹ However, the answer also asserts the affirmative defense that "[t]he Premises where accident is alleged to have occurred is not owned by METROPOLITAN TRANSPORTATION AUTHORITY." (Affirm. in Supp., Ex. B [Answer] ¶ 19.)

² This Court however notes that the "ADA allows litigants to pursue actions only for injunctive relief, and does not provide a private right of action for monetary damages in a personal injury action." (*Lugo v St. Nicholas Assoc.*, 18 AD3d 341, 342 [1st Dept 2005].) Furthermore, "[s]ince ADA's purpose is to address issues of discrimination and not safety, the act should not be construed as setting a safety standard for stairs or walkways, even with respect to disabled plaintiffs." (Id.)

As such, summary judgment dismissing the MTA from the instant case is not warranted at this early stage of the litigation. Given that the branch of Defendants' motion to change venue is contingent on dismissal of the complaint against the MTA, that branch of the motion is similarly denied.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion for summary judgment by Defendants Metropolitan Transportation Authority ("MTA") and MTA Long Island Rail Road ("LIRR"), pursuant to CPLR 3212, to dismiss the complaint as against the MTA, and to change the place of trial to Nassau County, pursuant to CPLR 503, 505 (a), 510 and 511, is denied; and it is further

ORDERED that Plaintiff Richard Realmuto shall file a copy of the instant decision and order on NYSCEF with notice of entry within twenty (20) days; and it is further

ORDERED that the parties shall appear before this Court for a preliminary conference on October 22, 2019 at 9:30 in Part 29 at 71 Thomas St., Room 104, New York, NY.

The foregoing constitutes the decision and order of this Court.


8/21/2019
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


ROBERT DAVID KALISH, J.S.C.