

**Haddad v New York City Tr. Auth.**

2020 NY Slip Op 30649(U)

February 27, 2020

Supreme Court, New York County

Docket Number: 451959/2019

Judge: Laurence L. Love

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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FATIHA EL HADDAD,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,  
METROPOLITAN TRANSPORTATION AUTHORITY BUS  
COMPANY, METROPOLITAN TRANSPORTATION  
AUTHORITY, CITY OF NEW YORK, CITY UNIVERSITY OF  
NEW YORK, NEW YORK CITY BOARD OF EDUCATION

Defendant.

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INDEX NO. 451959/2019

MOTION DATE 2/6/2020,  
2/6/2020

MOTION SEQ. NO. 001 001

DECISION + ORDER ON  
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 42, 43, 44, 45

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 42, 43, 44, 45

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents,

The following read on defendants', METROPOLITAN TRANSPORTATION  
AUTHORITY BUS COMPANY, and METROPOLITAN TRANSPORTATION  
AUTHORITY'S, motion for dismissal of all claims and cross-claims, CPLR 3211; or in the  
alternative, motion for summary judgment, per CPLR 3212, for plaintiff's failure to prove a  
prima facie case of negligence.

This personal injury action involves plaintiff exiting a NYCTA subway station, via the  
uptown staircase at 68<sup>th</sup> Street and Lexington Avenue. On October 4, 2017 plaintiff was walking  
towards an unspecified nearby bus stop, when she tripped and fell upon an allegedly defective

portion of the public sidewalk, which was located adjacently to the subway staircase in the area in front of 921 Lexington Avenue, New York, New York.

On or about December 28, 2017, plaintiff served her Notice of Claim on defendants. On December 27, 2018, plaintiff commenced this action through service of a Summons and Verified Complaint. A General Municipal Law § 50-h hearing was held on March 27, 2018. On May 31, 2019, issue was joined by defendants serving a verified Answer.

CPLR § 3212 (b) states that, “the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented” (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]).

The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (see *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

Defendants affirmation in support states in paragraph 9, “[b]ased upon plaintiff’s Verified Complaint, Notice of Claim, and the photographs contained therein, plaintiff allegedly fell while she was only a few feet away from the subway entrance located at the southeast corner of 68<sup>th</sup> and Lexington Avenue, and in front of 921 Lexington Avenue. Upon the aforementioned information, a search was conducted to determine the distance of the nearest bus stop using an official MTA Bus Stop Map published in July 2019 and Google Maps. Based upon the search, the location she was fell was at least one hundred (100) feet away from the two nearest bus stops (approximately).

The Second Department has held that, “[i]t is well settled, 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 (see *Cusick v Lutheran Medical Center*, 105 AD2d 681 [2d Dept 1984]. As a matter of law ... [the Transit Authority] is not responsible for maintenance and repair of the public streets and sidewalks (see *Franklin v New York City Transit Auth*, 2012 NY Misc LEXIS 5460, at 3 [2012]). The duty to maintain public sidewalks and roadways – including those adjacent to bus stops – in a reasonably safe condition and good repair, free from any defects, falls upon the City (see *Cabrera v City of New York*, 45 AD3d 455, 456 [1<sup>st</sup> Dept 2007]).

The duty to keep public sidewalks in reasonably safe condition and to repair any defects falls upon the municipality (see *D’Ambrosio v City of New York*, 55 NY2d 454 [1<sup>st</sup> Dept 1982]).

Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr Corp*, 18 NY3d 499, 503 [2012]).

Plaintiff’s affirmation in opposition states in paragraph 4, “[o]ne of the functions of the defendants MTA and MTA Bus Company with respect to public transportation is planning, as set forth in the moving papers. Planning is not defined by the movants and would include the pedestrian walkway between the two forms of mass transit involved in the case at bar.”

Paragraph 5 of plaintiff’s affirmation in opposition continues, “[t]he defendants, MTA and MTA Bus Company breached that duty to the plaintiff in that an unsafe and hazardous condition existed which prevented safe passage from one form of mass transit to the next.” The affirmation in opposition continues in paragraph 7 with, “[w]hether it be the path pedestrians

were to follow or the materials used on the sidewalk or the manner in which the sidewalk flags were placed and their upkeep is part of the planning involved on the part of defendant MTA as the umbrella organization for the New York City mass transit system.”


Plaintiff opposes summary judgment stating, “no discovery has taken place,” and “the moving defendants are relying upon documents, such as Google Maps that have not been presented in proper evidentiary form, thus rendering defendants’ summary judgment defective.”

To establish a prima facie case of negligence upon the MTA, it is incumbent upon a plaintiff to establish: “(1) the existence of a duty on the part of the defendant to the plaintiff, (2) a breach of that duty, and (3) injury suffered by the plaintiff which was proximately caused by the breach ...” (see *Cruz v New York City Transit Auth*, 136 AD2d 196, 198 [2d Dept 1988]).

ORDERED that the motions for summary judgment of defendants METROPOLITAN TRANSPORTATION AUTHORITY BUS COMPANY and METROPOLITAN TRANSPORTATION AUTHORITY are granted and the complaint is dismissed against them; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants METROPOLITAN TRANSPORTATION AUTHORITY BUS COMPANY and METROPOLITAN TRANSPORTATION AUTHORITY dismissing the claims and cross-claims made against them in this action, the case remains open against the other named defendants, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

2/27/2020  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE