

Martinez v New York City Tr. Auth.
2020 NY Slip Op 31105(U)
April 30, 2020
Supreme Court, New York County
Docket Number: 153421/2017
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART IAS MOTION 21

Justice

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INDEX NO. 153421/2017

ARMANDO ANTONIO MARTINEZ,
Plaintiff,

MOTION DATE N/A

MOTION SEQ. NO. 003, 004

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
LUMEL GONZALEZ

DECISION + ORDER ON
MOTIONS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 65, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, and (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 92, 103, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on these motions to/for FILE SUPPLEMENTAL ANSWER and DISMISSAL; PARTIAL SUMMARY JUDGMENT

This matter arises out of an incident that occurred on February 27, 2016, at the southbound Spring Street subway station in Manhattan. Plaintiff apparently fell to the train tracks and was struck by a No. 6 train that was entering the station, sustaining personal injuries.

Plaintiff moves (Motion seq. 003) pursuant to CPLR 3212 for partial summary judgment on the issue of liability. Defendants New York City Transit Authority ("NYCTA"), Metropolitan Transportation Authority and Lemuel Gonzalez (i/s/h/a Lumuel Gonzalez) oppose plaintiff's motion. Defendants move (Motion seq. 004) pursuant to CPLR 3025 for leave to amend their answer and pursuant to CPLR 3211 and 3212 to dismiss the complaint, which motion plaintiff opposes. Both motions are addressed in this decision. For the reasons set forth

below, plaintiff's motion is granted as to defendant NYCTA, and defendants' motion is granted in part and denied in part.

Motion to File Amended Answer

Defendants seek to amend their answer to correct and supplement the affirmative defense based on qualified immunity. Pursuant to CPLR 3025(b), "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Leave to amend pleadings is generally freely given, absent prejudice and surprise resulting from the delay. *Edenwald Contr. Co. v. City of New York*, 60 N.Y.2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v. Nissel*, 27 A.D.3d 207, 208 (1st Dep't 2006). Accordingly, that part of defendants' motion seeking to amend their answer is granted and the proposed Amended Verified Answer to Amended Verified Complaint, annexed to defendants' moving papers as Exhibit E, is deemed served.

Motions for Partial Summary Judgment and to Dismiss Complaint

Plaintiff's motion for partial summary judgment is based on the grounds of collateral estoppel, in that the issue of NYCTA's liability in negligence was previously determined by the jury verdict, and the September 11, 2019, Decision and Order of Justice Frank P. Nervo (the "Predaza Decision"), in the matter *Pedraza v. New York City Transit Authority, et al*, Index No. 159366/2016. The plaintiff in *Pedraza* was injured when he was struck by a southbound No. 6 train in the Spring Street subway station. The jury found NYCTA to be liable in negligence for failing to limit train speeds to 15 mph when entering the southbound Spring Street station. NYCTA moved post-verdict to dismiss the plaintiff's action and for a directed verdict in its favor on several grounds, including that the plaintiff failed to prove that NYCTA was negligent in allowing trains to enter the Spring Street station faster than could be stopped within the train

operator's line of sight, and that NYCTA was immune from suit under the doctrines of governmental function immunity and qualified immunity. Justice Nervo's decision, *inter alia*, denied NYCTA's motion. He held that the plaintiff made a *prima facie* case that NYCTA was negligent in allowing trains to enter the Spring Street station at 30 mph, as the plaintiff's expert related his opinion regarding appropriate speed at the station to the facts of the *Pedraza* case, including the particular sightlines and stopping distances, and the plaintiff's position on the tracks relative to the train's stopping distance. Justice Nervo further held that NYCTA is not entitled qualified immunity because it did not show that any authorized public planning body considered the same question of the risk of a train striking a person in the Spring Street station and weighed it against the efficiency of train speeds or any other public policy issues. Finally, the judge held that governmental function immunity is inapplicable because in providing transportation, NYCTA is acting in a proprietary capacity (*i.e.*, substituting for or supplementing traditionally private enterprises; here, transportation), not performing a governmental function, and thus does not have immunity but rather is subject to liability for negligence.

The doctrine of collateral estoppel is well-established: a party is precluded from relitigating an issue that was previously decided against it, where the party had a fair opportunity to litigate the issue. *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 455 (cites omitted). In this matter, the circumstances of plaintiff's accident – which are undisputed by defendants – are virtually identical to those of the *Pedraza* case. Both plaintiff herein and the *Pedraza* plaintiff were struck by downtown No. 6 trains in the same portion of the Spring Street subway station. Plaintiff herein proffers the affidavit of Nicholas Bellizzi, the engineering expert who also testified on behalf of the plaintiff in *Pedraza*, in which Mr. Bellizzi concludes that “NYCTA was negligent in failing to limit train speeds to 15 mph for trains entering Spring Street station in a

southbound direction,” which failure was a substantial factor in causing the underlying accident. (Affidavit of Nicholas Bellizzi, Exh. 3 to plaintiff’s Notice of Motion, p. 6) Mr. Bellizzi provided similar testimony in the *Pedraza* trial. *Id.*

Thus, the issue of NYCTA’s liability with respect to train speed entering the downtown Spring Street subway station was previously litigated in *Pedraza*, and decided against it. Moreover, NYCTA had a fair opportunity to litigate this issue. Justice Nervo did not preclude NYCTA from presenting expert testimony at the *Pedraza* trial, he “precluded only discussion of national industry standards and limited efficiency/delay discussions to the Lexington Avenue line. Defendants’ experts were free to discuss the speed restrictions on the Spring Street station track, the effect of speed restrictions on the Lexington Avenue subway line, stopping distances of trains, conductor sight lines, and Transit Authority procedures.” *Pedraza* Decision, p. 14. In their instant motion for summary judgment, defendants proffer affidavits of several of the same experts whose testimony it sought to introduce at the *Pedraza* trial. Yet none of these individuals address the specific factual circumstances of plaintiff’s accident in the downtown Spring Street subway station, or otherwise address the conclusions of plaintiff’s expert, Mr. Bellizzi.

Defendants also argue that the doctrines of governmental function immunity and qualified immunity obtain to relieve them of liability. However, the *Pedraza* Decision squarely addressed the applicability of these doctrines and found that neither applied. The case law cited by defendants in their opposition to plaintiff’s motion and in their own motion is the same as that presented to and considered by Justice Nervo. There is nothing in the instant motion papers that would require here a different conclusion from Justice Nervo’s.

Based on the foregoing, plaintiff has established entitlement to partial judgment against NYCTA as to liability, and plaintiff's motion is granted with respect to NYCTA. For the same reasons, that portion of defendants' motion seeking summary judgment dismissing plaintiff's complaint is denied. Accordingly, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment as to NYCTA is granted; and it is further

ORDERED, that the portion of defendants' motion seeking leave to amend their answer is granted; and it is further

ORDERED, that the portion of defendants' motion seeking to dismiss plaintiff's complaint is denied.

This constitutes the Decision and Order of the Court.

4/30/2020
DATE


SUZANNE J. ADAMS, J.S.C.

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