

Agripino v City of New York
2020 NY Slip Op 31361(U)
May 12, 2020
Supreme Court, New York County
Docket Number: 400740/2009
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE

PART

IAS MOTION 62

Justice

-----X

AGRIPINO, REYES

Plaintiff,

- v -

CITY OF NEW YORK, THE TRIBOROUGH BRIDGE AND
TUNNEL AUTHORITY D/B/A MTA BRIDGES AND
TUNNELS, THE NEW YORK CITY TRANSIT AUTHORITY
and METROPOLITAN TRANSPORTATION AUTHORITY

Defendant

-----X

INDEX NO.

400740/2009

MOTION DATE

3/18/2020

MOTION SEQ. NO.

001

DECISION + ORDER ON MOTION

The following papers, numbered 1 _____, were read on this application to/for CPLR 3212

Notice of Motion/ Petition/ OSC - Affidavits - Exhibits

No(s)

1-4

Notice of Cross-Motion/ Petition/ OSC - Affidavits -

No(s)

10-13

Answering Affidavits - Exhibits

No(s)

5-7, 14-16

Replying

No(s)

8-9

Upon the foregoing documents, the motion is decided as follows:

Defendant, the CITY OF NEW YORK, seeks summary judgment dismissing plaintiffs complaint and all cross-claims and co-defendant THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY D/B/A MTA BRIDGES AND TUNNELS, THE NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY (hereinafter "AUTHORITY") cross-moves for the same relief.

This matter arises out of an October 21, 2007 incident in which plaintiff was riding his bicycle on the ramp/pathway of the Authority's bridge leading to Randall's Island on the Bronx crossing span when he fell over the side railing and fell approximately forty feet sustaining serious personal injuries.

Plaintiff filed a Notice of Claim on or about December 28, 2007 and a 50-h hearing occurred on or about July 10, 2008. Plaintiff filed a Summons and Complaint on or about August 7, 2008 and issue was joined by the CITY OF NEW YORK on or about October 21, 2008 and by Co-Defendant AUTHORITY in April, 2009. Venue was transferred from Bronx to New York county on or about January 27, 2009. A deposition of plaintiff was conducted on February 26, 2013. Thereafter, the depositions of non-party Dennis Lombardi occurred May 15, 2015, of Cassandra Edghill, Director of Bridges North for AUTHORITY on October 6, 2015, of Richard Hilderbrand for AUTHORITY and of Hayes Lord for City of New York on May 25, 2018. Note of Issue was filed on or about June 14, 2019.

Plaintiff claims that he fell when he was caused to lose control of his bicycle, striking the concrete wall of the ramp/pathway and was propelled over the wall falling approximately forty feet. The claims against the City are that the City was negligent in the design, erection, construction and maintenance of said bridge, span, ramp/pathway area including the fact that there were allegedly improper or lack of signs in the area.

Defendant City of New York seeks to dismiss the matter asserting that the City did not own, operate, manage, maintain or control the bridge and pathway/ramp where plaintiffs incident occurred and that the City was not the proximate cause of the alleged incident.

This position is based upon the fact that the Bridge and subject pathway area were all under the care and control of the AUTHORITY not the City of New York. Plaintiff disputes same on the grounds that the NYC Master Bicycle Master Plan (hereinafter "Bike Plan") illustrates the City of New York's role/responsibility in the Bike plan which encompasses the AUTHORITY bridge in question. The plan itself, which is an exhibit of the instant motion references that the City of New York worked to design and implement a network of 900 miles of bike paths, however a closer

reading reveals that the City of New York's plan was nothing more than a guide for areas not within the jurisdiction of the City of New York. The testimony of the various witnesses at depositions clearly debunks plaintiffs belief. Hayes Lord, Senior Transportation Manager for the City offered extensive testimony related to the Bike Plan program which was released in 1997. He clearly testified that the CITY had no jurisdiction over the AUTHORITY, that the TBTA bridge in question was not City property and the placement of signage on the bridge was responsibility of the AUTHORITY. Further he clarified that the Bike Plan of the city was a guiding document related to the build out of bike paths throughout the city of New York however as to the existence and implementation of bike paths on AUTHORITY bridges it was the AUTHORITY that would determine same, not the CITY.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957); *Weiner v. Garo Die Cutting, Inc.*, 104 A.D.2d331 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153

A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

Although plaintiff presents claims that the bike plan itself puts some onus on the CITY, no evidence nor any controlling case law has been presented of that claim. Defendant's evidence and testimony clearly show that the signage and pathways on the AUTHORITY's bridge were not under the control of the City of New York. Additionally, the AUTHORITY acknowledged in their Answer that they owned, maintained and controlled the pathway in question.

Additionally there is no evidence in admissible form to indicate that the City of New York was the proximate cause of the alleged incident. The only possible claim on behalf of plaintiff against the City would be if the signage or lack of same leading to the bridge on City streets was a proximate cause of the incident. However, the testimony is clear that the plaintiff in this case had already reached the bridge, had even walked his bike up a flight of stairs and clearly was within the AUTHORITY property at the time of the incident. To claim any involvement on the City of New York would be pure speculation.

The AUTHORITY is also moving to dismiss this matter claiming that plaintiff is unable to identify what caused the incident and that the AUTHORITY did not have a duty to warn plaintiff of any condition. The AUTHORITY argues that as plaintiff could not specify exactly what caused him to lose control of his bicycle at the location in question, that his entire case is based on speculation. Defendant believes plaintiffs testimony that he was riding his bike downhill and an undetermined but "kind of slow" speed when he lost control of bike, hit the wall and went over the side railing is insufficient to establish a cause of action against defendant AUTHORITY and therefore there is no issues of material fact. Additionally the AUTHORITY relies on their own witness, Ruben Torres, who was a responding AUTHORITY officer at the time of the incident,

who took a report from plaintiff's friend which indicated he believed that plaintiff had hit a rock or debris in the area although officer Torres found no such debris at the time.

Defendant dismisses plaintiff's expert engineering report by William Brewer claiming said report fails to provide a causal link between the condition of the walkway/pathway and the subject incident. Defendant claims it is unclear if plaintiff and expert were both referring to the same ramp location (i.e. the east or west ramp) and that the plaintiff knew or should have known that the pathway was not meant for bicycles as per signage. Defendant goes on to say it was an open and obvious condition and therefore not their responsibility.

The court cannot ignore the findings of plaintiff's engineering report which has been presented and provides ample evidence of a cause of action and a question of fact. Said report and supporting twenty-three page affidavit states that the condition of the pathway was dangerous and violated safety standards. Said report discusses a number of findings including the fact that the steep slope of 10.5 percent, narrow available width and turn radius as well as missing signage and no warning markings all created a dangerous condition. Plaintiff's expert also finds that not knowing the actual speed of plaintiff's bicycle which is almost impossible to ascertain at the time is unnecessary as basic principles of physics sufficiently provide the necessary information. The report also discusses the lack of additionally protective fencing to avoid just such a forty-foot fall as plaintiff experienced.

The Court notes that plaintiff's expert also opined that the same findings exist for both the east and west ramps as same are identical in design and condition.

Deposition testimony of defendant's own witnesses confirm that signage warning bicyclist to dismount, etc. were missing from the location at the time of the incident. Additionally despite defendant's claims that the condition was open and obvious there is testimony indicating that the

AUTHORITY knew that the public often used bicycles on the subject pathway to reach the island park. Based on all of the above factors it is clear to the court that plaintiff has raised a triable issue of fact as it relates to the AUTHORITY's motion.

Defendant, AUTHORITY's motion is hereby denied in its entirety.

ORDERED that the motion of defendant THE CITY OF NEW YORK for summary judgment, dismissing the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein.

The Clerk of the Court is directed to transfer this matter to a non-city part as the City of New York is no longer a party.

<u>5/12/2020</u>			
DATE		LAURENCE L. LOVE, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☐ GRANTED IN PART	☒ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☒ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE