

<b>Boalds v Metropolitan Transp. Auth.</b>
2020 NY Slip Op 31462(U)
May 15, 2020
Supreme Court, New York County
Docket Number: 154218/2019
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 19

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DERRICK BOALDS,

Plaintiff

Index No.: 154218/2019

-against-

Mot. Seq. 1

METROPOLITAN TRANSPORTATION AUTHORITY,  
LONG ISLAND RAILROAD COMPANY,  
METRO NORTH RAILROAD and MTA-LONG  
ISLAND RAILROAD,

Defendants.

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*Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:*

Papers	Numbered
Defendant's Motion / Affirmation	<u>9-15</u>
Plaintiff's Opposition / Affirmation	<u>20</u>
Defendant's Affirmation in Reply	<u>21</u>

**LISA A. SOKOLOFF, J.:**

This personal injury/negligence action arises out of plaintiff Derrick Boalds’s alleged slip and fall at or near the trash compactor bay of loading dock #1 located at Grand Central Station, 89 East 42<sup>nd</sup> Street, New York, New York. Plaintiff alleges that defendants Metropolitan Transportation Authority (MTA), Long Island Railroad Company (LIRR), Metro North Railroad (Metro-North) and MTA-Long Island Rail Road (collectively, defendants), among other things, violated the Federal Employer’s Liability Act (FELA) by failing to provide him with a safe place to work.<sup>1</sup> Defendants now move, pursuant to CPLR 3103 and 3123, for a protective order striking/quashing plaintiff’s notice to admit upon defendants dated July 2, 2019. For the reasons set forth below, defendants’ motion is granted in its entirety.

<sup>1</sup> Defendants state that Metro-North Commuter Railroad is incorrectly sued herein as the Metro North Railroad. NYSCEF Doc. No. 10, Muraidekh affirmation in support, ¶ 1.

## BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff commenced this action by filing a summons and complaint on April 23, 2019. Pursuant to the complaint, on September 11, 2018, while plaintiff was on the subject premises, more specifically near the trash compactor bay of loading dock #1 at Grand Central Station, he was caused to slip and fall. Further, the cause of this accident and the resulting injuries were the result of the “careless and negligent manner in that [sic] the defendants owned, operated, maintained, managed and controlled the aforesaid premises . . . .” NYSCEF Doc. No. 12, Complaint, ¶ 51. The complaint alleges that defendants managed, maintained, controlled, operated and supervised the premises and that defendants were the “lessee[s]/lessor[s].” See ¶¶ 22 - 48. The complaint further states that defendants had actual and/or constructive notice of this condition and that they violated the FELA by failing to provide plaintiff with a safe place to work. Defendants answered the complaint and, for the majority of the allegations, denied “knowledge of information sufficient to form a belief as to the truth of the allegations . . . .” NYSCEF Doc. No. 13, Answer, ¶ 2.

On July 2, 2019, plaintiff served defendants with a notice to admit. Defendants argue that the notice to admit should be stricken, as it “goes to the heart of the matters at issue” and is palpably improper. Muraidekh affirmation in support, ¶ 12. Specifically, according to defendants, whether they owned, leased, managed, maintained, operated, supervised and controlled the premises are admissions regarding ultimate factual and/or legal conclusions.

In response, plaintiff withdrew paragraphs 4,7,8,12,15, 16, 20, 23, 24, 28, 31 and 32 of the notice to admit. He states that he is “withdrawing his request that Defendants admit management, operation, and supervision.” NYSCEF Doc. No. 20, Marron affirmation in opposition, ¶ 2. However, according to plaintiff, the remaining issues of ownership, maintenance, control and tenancy are factual matters that do not concern material issues in this

case and will not be disputed at trial. Plaintiff continues that defendants clearly know who owns, controls and maintains the premises described in the complaint. Further, “this case does not turn on who owned, maintained, controlled, leased the premises . . . .” *Id.*, ¶ 9.

### DISCUSSION

Pursuant to CPLR 3123 (a), in relevant part:

“a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents . . . or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry.”

A notice to admit can be used “to eliminate from contention those matters which are not in dispute in the litigation and which may be readily disposed of.” *32nd Ave. LLC v Angelo Holding Corp.*, 134 AD3d 696, 698 (2d Dept 2015). It is not intended for the “purpose of compelling admission of fundamental and material issues or ultimate facts that can only be resolved after a full trial.” *Meadowbrook-Richman, Inc. v Cicchiello*, 273 AD2d 6, 6 (1st Dept 2000). Furthermore, a notice to admit “may not be employed as a substitute for other disclosure devices, such as examinations before trial, depositions upon written questions or interrogatories.” *Taylor v Blair*, 116 AD2d 204, 206 (1st Dept 1986).

As set forth below, defendants’ motion for a protective order seeking to strike the notice to admit, is granted. Ownership, has, under certain circumstances, been the proper subject of a notice to admit. *See e.g. Villa v New York City Hous. Auth.*, 107 AD2d 619, 620 (1st Dept 1985) (Although certain items were stricken, Court modified notice to admit to include, among other things, “questions of defendant’s ownership and control of the premises and its duty to install and maintain window guards for the safety of the tenants”). However, in this situation, the court finds that the requests included in the notice to admit are patently improper as they seek admissions and concessions that are related to the “heart of the matter at issue.” *Tolchin v*

*Glaser*, 47 AD3d 922, 923 (2d Dept 2008); *see e.g. Echevarria v 158th St. Riverside Dr. Hous. Co., Inc.*, 113 AD3d 500, 502 (1st Dept 2014) (A notice to admit requesting admissions on maintenance and repair of the door at issue and contractual indemnification pursuant to the occupancy agreement was improper, as these admissions “both were contested issues and ultimate facts in the case . . .”).

Plaintiff argues that there cannot possibly be any dispute about who owned, maintained or controlled the premises and that these matters will not be disputed at trial. However, “plaintiff could not have reasonably believed that there was no substantial dispute regarding these issues.” *See Fetahu v New Jersey Tr. Corp.*, 167 AD3d 514, 516-517 (1st Dept 2018) (internal citations omitted) (“The court properly granted a protective order with respect to Item Nos. 1-2, 14, and 16-20 in plaintiff’s third notice to admit because plaintiff could not have reasonably believed that there was no substantial dispute regarding these issues”).

As this is a personal injury action, admissions regarding ownership, tenancy, and whether defendants maintained or controlled the premises are essential to the contested issue of negligence. Not only do the admissions address the ownership of a premises, but concern a specific portion of the premises; namely, the first level of the loading dock #1. These admissions also may relate to the ultimate issue of employer liability, as plaintiff alleges that defendants failed to provide him with a safe place to work. As a result, these admissions are palpably improper, as “[p]laintiff does not seek admissions with respect to ‘clear-cut’ matters of fact as to which he reasonably believes there can be no dispute or controversy.” *Taylor v Blair*, 116 AD2d at 206; *see also Stanger v Morgan*, 100 AD3d 545, 546 (1st Dept 2012) (“the request for an admission that the defendant driver was on her cellular phone at the time of the accident was palpably improper, as the matter was in dispute and went to the heart of the issue of whether she was negligent in the operation of the subject vehicle”).

CPLR 3013 (a) states, in relevant part, that “[t]he court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device.” A court may grant a protective order pursuant to CPLR 3013 (a) striking a notice to admit. *See e.g. Wolin v St. Vincent’s Hosp. & Med. Ctr. of N.Y.*, 304 AD2d 348, 349 (1st Dept 2003) (citation omitted) (“court properly granted a protective order with regard to plaintiff’s notice to admit since plaintiff was improperly using such device to limit the scope of disclosure rather than for its intended purpose--to resolve factual matters pertaining to the elements of her claim which will not be in dispute at trial”). Thus, as plaintiff’s use of the notice to admit is improper, defendants’ motion seeking a protective order striking the notice to admit, is granted.

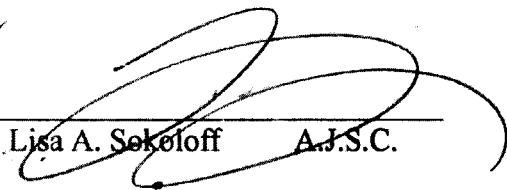
**CONCLUSION**

Accordingly, it is

ORDERED that defendants’ motion for a protective order striking the notice to admit dated July 2, 2019, is granted.

Dated: May 15, 2020

ENTER:

  
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 Hon. Lisa A. Sekeloff      A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE