

<b>Rodriguez v Metropolitan Transp. Auth.</b>
2021 NY Slip Op 31310(U)
April 19, 2021
Supreme Court, New York County
Docket Number: 153734/2018
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. 153734/2018

JOSE RODRIGUEZ,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that defendants' motion is granted to the extent that the complaint as against defendant Metropolitan Transportation Authority ("MTA") is dismissed. The remainder of the motion is denied because triable issues of fact exist that preclude the granting of summary judgment as to defendant New York City Transit Authority ("NYCTA").

This action arises out of an incident that occurred on February 14, 2017, at the D/B train platform of the 145th Street and St. Nicholas Avenue subway station in Manhattan. Plaintiff alleges he was knocked down by an unknown person on an extremely crowded platform, sustaining personal injuries. Defendants now move pursuant to CPLR 3211 and 3212 to dismiss the complaint on the grounds that neither defendant bears liability for plaintiff's injuries and there are no issues of fact with respect to the absence of defendants' negligence, and that MTA is

not a proper party to the action pursuant to Public Authorities Law § 1263. Plaintiff opposes the motion.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Further, it is well-settled that “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 demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it, and summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521-22 (1<sup>st</sup> Dep’t 1989).

As an initial matter, MTA is not a proper to this action. The complaint alleges that plaintiff’s injuries resulted from acts or omissions by defendants in connection with the operation and maintenance of the subway system. Such functions relating to the subway system are not the province of MTA, it being well settled as a matter of law that MTA’s functions “are limited to financing and planning and do not include the operation, maintenance, and control of any facility.” *Delacruz v. Metropolitan Transportation Authority*, 45 A.D.3d 482, 483 (1<sup>st</sup> Dep’t 2007). MTA and NYCTA are separate legal entities with different functions. *Lopez v. Metropolitan Transportation Authority*, 267 A.D.2d 359 (2<sup>nd</sup> Dep’t 1999); *see also Mayayev v. Metropolitan Transp. Bus*, 74 A.D.3d 910, 911 (2<sup>nd</sup> Dep’t 2010) (MTA and its subsidiaries must

be sued separately, and are not responsible for each other's torts); *HRH Construction LLC v. Metropolitan Transportation Authority*, 33 A.D.3d 568, 570 (1<sup>st</sup> Dep't 2006); *Nowinsky v. City of New York*, 189 A.D.2d 674, 67 (1<sup>st</sup> Dep't 1993). Thus, there can be no cause of action asserted against MTA, warranting dismissal of the complaint against it.

With respect to the portion of the motion relating to NYCTA, however, construing plaintiff's complaint liberally, and viewing the evidence before the court in a light most favorable to the non-moving party, defendants' motion must be denied. As the parties have noted in their respective papers, "[a] subway company is not negligent merely because it permits crowds to gather on its platform. Before proof of negligence in this regard may be said to exist, it must be shown that the crowd was so large and unmanaged that a user of the platform was restricted in his free movements or was unable to find a safe standing place, and that as a result of either of those conditions an injury was sustained." *Ryan v. City of New York*, 7 A.D.2d 298, 299 (1<sup>st</sup> Dep't 1959) (quoting *Cross v. Murray*, 260 A.D.2d 1013(2<sup>nd</sup> Dep't 1940). Here, the evidence before the court indicates the existence of material issues of fact as to whether the platform was so crowded that plaintiff's movements were restricted and he was prevented from moving to a safe spot on the platform. Plaintiff testified at his deposition that the subway car he was in was "pretty crowded," as passengers had "accumulated" inside the train at a prior stop. (Affirmation in Opposition, Exhibit A, p. 13) He testified that when the train came to a stop, he was in the midst of a crowd that immediately exited the car, and after taking four or five steps, a man pushed him to the platform and then fell on top of him. (Affirmation in Opposition, Exhibit A, pp. 16-17) Such testimony raises questions for the trier of fact as to whether the condition of the platform at the time of the disputed incident was "so large and unmanaged" that NYCTA could be held liable in negligence for plaintiff's alleged injuries. *Compare Garcia v.*

New York City Tr. Auth. 114 A.D.3d 720, 722 (1<sup>st</sup> Dep't 2014) (absence of sufficient evidence in the record to establish *prima facie* negligence against NYCTA warranted reversal of verdict of liability in favor of the plaintiff).

Accordingly, it is hereby

ORDERED that defendants' motion is granted to the extent that the complaint is dismissed as against defendant MTA; and it is further

ORDERED that the remainder of defendants' motion for dismissal and summary judgment is denied.

This constitutes the decision and order of the court.

4/19/2021

DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: