

**Islam v City of New York**

2021 NY Slip Op 33954(U)

April 6, 2021

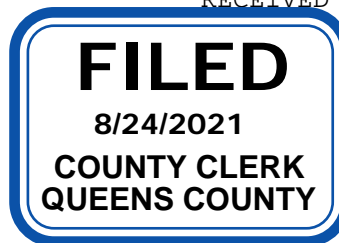
Supreme Court, Queens County

Docket Number: Index No. 711125/2019

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
MOHAMMED ISLAM,

Plaintiff,

-against-

THE CITY OF NEW YORK and NEW YORK CITY  
TRANSIT AUTHORITY,

Defendants.  
-----X

Index No. 711125/2019

Part 6

Motion Date: February 8, 2021

Calendar No. 39

Sequence No. 3

The following papers numbered 1 to 11 read on this motion by defendants’ motion for summary judgment and dismissal pursuant to CPLR §3212, and this cross-motion by plaintiff to compel defendants to respond to plaintiff’s discovery demands.

Papers  
Numbered

- Notice of Motion, Affirmation, Exhibits.....1-4
- Notice of Cross-Motion, Affirmation, Exhibits.....5-8
- Defendants’ Reply Affirmation, Exhibits.....9-11

Upon the foregoing papers it is ordered that these motions are determined as follows:

Defendants’ motion for summary judgment and dismissal pursuant to CPLR §3212(b) is granted, as there are no issues of fact in dispute to find defendants liable for plaintiff’s injuries. Plaintiff’s cross-motion to compel defendants to comply with discovery is denied as moot.

Plaintiff commenced this action for personal injuries sustained on January 5, 2018, when he slipped and fell on the stairs at the 33<sup>rd</sup> Street train station operated by defendants. Plaintiff filed the Summons and Complaint on January 29, 2019, and issue was joined on February 19, 2019. Plaintiff filed the Notice of Issue on August 3, 2020, and defendants now move for summary judgment, and plaintiff cross-moves for discovery.

Defendants argue that summary judgment is warranted as they did not cause or create the

dangerous condition alleged by plaintiff, nor did they have actual or constructive notice of said condition. Defendants submit the pleadings, plaintiff's deposition transcript, the NYCTA cleaners' job schedule, deposition testimony from Ana Imbert, and a climatological report in support of their motion. Plaintiff alleges he slipped on snow and ice on the train station stairs but testified that it had snowed the night before his accident, and on the day of his accident the weather was sunny. Ms. Imbert, a cleaner employed by defendants, testified that she was responsible for maintenance and cleaning at the train station and there was routine cleaning at least five times that day prior to plaintiff's accident. The climatological report shows that there were 7.4 inches of snow on January 4, 2018, but no snow fell on the date of plaintiff's accident. Based upon the above, defendants argue they were not negligent in maintaining the stairwell, and it was impossible for two inches of snow to have accumulated where plaintiff fell. They further argue that plaintiff's testimony showed there was mud tracked in from train passengers, and that it cannot be liable for mud tracked in through the course of the day by pedestrians. Finally, they argue that they have presented sufficient evidence of routine maintenance and cleaning during the day prior to plaintiff's accident, and therefore did not create a dangerous condition. Defendants also oppose plaintiff's cross-motion, arguing that plaintiff filed the Note of Issue without seeking further discovery, and now only seek to compel discovery because defendants filed a summary judgment motion.

Plaintiff opposes defendants' motion, arguing there are issues of fact in dispute, and cross-moves to compel discovery. Plaintiff presents his Bill of Particulars, discovery demands and preliminary conference order, defendants' station log, plaintiff's 50-h transcript and deposition testimony, and Ms. Imbert's deposition testimony, in support of his cross-motion. Plaintiff argues that defendants failed to provide discovery as demanded, and plaintiff is prejudiced in proceeding with this matter and opposing the motion by defendants' noncompliance. He further argues that defendants' evidence is insufficient to establish a prima facie case of summary judgment, as plaintiff clearly stated there was snow on the stairs, even if he did not see it prior to falling down, and defendants failed to present an affidavit of merit from someone who saw the staircase when plaintiff fell. He further argues that the cleaners job schedule is insufficient, as it involves a schedule for summer months and does not include snow removal practices. As defendants failed to present evidence of the cleaning schedule at the time of plaintiff's accident, defendants' evidence is without probative value and failed to eliminate all triable issues of fact.

Pursuant to CPLR 3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 NY3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause

of action.” (*Id.*). The party moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824 [2014]; *Brill v City of New York*, 2 NY3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 [2012].) Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 NY2d 557 [1980].)

In a premises liability case, a defendant real property owner, or a party in possession or control of real property who moves for summary judgment can establish its *prima facie* entitlement to judgment as a matter of law by showing that it neither created the allegedly dangerous or defective condition nor had actual or constructive notice of its existence. (*Chang v. Marmon Enters., Inc.*, 172 AD3d 678-679 [2<sup>nd</sup> Dept. 2019].)

Defendants established a prima facie entitlement to summary judgment, by presenting sufficient evidence that they did not have actual or constructive notice of the dangerous condition on the stairs, nor did they cause or create the condition to occur. (*See Joseph v. New York City Tr. Auth.*, 66 AD3d 842 [2<sup>nd</sup> Dept. 2009].) They established that they did not receive any complaints about the stairs prior to plaintiff’s accident, and plaintiff did not complain to defendants after falling but only reported his accident to the police. Ms. Imbert clearly stated that there were no complaints of a dangerous condition on the stairwell prior to plaintiff’s fall and testified as to the specific stair-cleaning procedure. They further established that it was not snowing at the time of plaintiff’s accident, and there was no evidence that snow had accumulated in the area where plaintiff fell, or that defendants had notice of it.

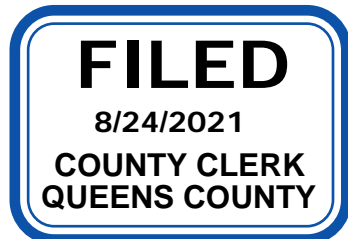
Plaintiff failed to raise a triable issue of fact in dispute. (*See Gentles v. New York City Transit Auth.*, 275 AD2d 388 [2<sup>nd</sup> Dept. 2000].) His argument that the cleaning schedule was irrelevant as it involved the summer 2017 is without merit, as Ms. Imbert gave specific testimony with regard to her responsibilities to remove snow at the time of plaintiff’s accident. Plaintiff’s deposition testimony also established that the train station was covered with mud as pedestrians walked through the station, and there was no evidence of snow seen prior to plaintiff’s fall. As plaintiff’s claims of snow accumulation on the stairs were speculative and without evidentiary support, there are no issue of fact in dispute. (*See Skouras v. New York City Tr. Auth.*, 48 AD3d 547 [2<sup>nd</sup> Dept. 2008].)


Accordingly, defendants’ motion for summary judgment pursuant to CPLR §3212 is

granted, and plaintiff's Complaint is dismissed. Plaintiff's cross-motion to compel defendants to produce discovery is denied as moot.

This constitutes the decision and Order of the Court.

Dated: April 6, 2021



  
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Hon. Tracy Catapano-Fox, J.S.C.