

**Brown v Cordero-Roman**

2023 NY Slip Op 33091(U)

August 8, 2023

Supreme Court, Queens County

Docket Number: Index No. 712082/18

Judge: Kevin J. Kerrigan

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10  
Justice

-----X  
Christopher Brown,  
  
Plaintiff,  
- against -

Index  
Number: 712082/18

Motion  
Date: 7/31/23

Lisamarie Cordero-Roman,  
Jonas A. Concepcion, City of New York,  
New York City Department of Design and  
Construction, New York City Department of  
Transportation, Metropolitan Transportation  
Authority, New York City Transit Authority,  
the Hallen Construction Co. Inc., Hellman  
Electric Corp., Welsbach Electric Corp.,  
Brooklyn Union Gas Company d/b/a National  
Grid, Consolidated Edison Inc., Triumph  
Construction Corp., Time Warner Cable New  
York City LLC, and Tri-Messine Construction  
Company Inc.,  
  
Defendants.

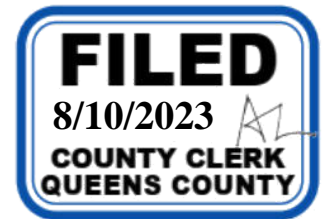
Motion Seq. No.: 4

-----X  
Time Warner Cable New York City LLC,  
  
Third-Party Plaintiff,  
  
- against -

JEK Communications Inc.,  
  
Third-Party Defendant.

-----X  
Hellman Electric Corp.,  
  
Second Third-Party Plaintiff,  
  
- against -

Nico Asphalt Paving Inc.,  
  
Second Third-Party Defendant.  
-----X



The following papers numbered E188-E231 read on this motion by defendants, New York City Transit Authority and Metropolitan Transportation Authority, for summary judgment.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits.....	E188-214
Affirmation in Opposition-Exhibits.....	E215-220
Reply.....	E221-222
Affirmation in Opposition-Exhibits.....	E223-229
Reply.....	E230-231

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Defendants, New York City Transit Authority and Metropolitan Transportation Authority, for summary judgment is granted.

Plaintiff allegedly sustained injuries while operating a motorized wheelchair and attempting to cross Woodhaven Boulevard near Union Turnpike in Queens County on November 4, 2017. At the aforementioned time and place, Plaintiff claims to have been unable to complete crossing due to a trench running along the crosswalk and was struck by a motor vehicle owned and operated by Defendants Cordero and Concepcion.

The branch of the motion for summary judgment on the premise that MTA is an improper party to this action is granted. MTA is a legal entity separate and distinct from the New York City Transit Authority (see HRH Construction LLC v. Metropolitan Transportation Authority, 33 AD 3d 568 [1st Dept 2006]); Lopez v. Metropolitan Transportation Authority, 267 AD 2d 359 [2d Dept 1999]). It is also a separate and distinct legal entity from the City of New York (see Public Authorities Law §1263). Since the MTA has the power to sue and be sued (see, Public Authorities Law §1265[1]), any action alleging tortious acts committed by MTA must be brought against the MTA and not the municipality (see generally Hampton v. State of New York, 168 Misc 2d 1036 [Court of Claims 1995]).

The Transit Authority does not own, maintain, operate or control the public streets and sidewalks (see New York City Charter §383). The duty to repair and maintain roadways and sidewalks, even those adjacent to bus stops, is the responsibility of the City, not the Transit Authority (see Cioe v. Petrocelli Electric Co., Inc., 33 AD 3d 377 [1st Dept 2006]). In any event, even had the area of

the roadway where plaintiff sustained his accident been located at a bus stop, the NYCTA is not responsible for the maintenance of bus stops within the City of New York (see MCFarlane v. City of New York, 243 AD 2d 691 [2d Dept 1997]).

Movants proffer three affidavits from Sara Wyss, Deputy Chief of Bus Service Planning for NYCTA and MTA Bus, in support of the motion. Wyss affirms that the construction work performed at the subject location on or about November 4, 2017 was in connection with the implementation of the Q52 and Q53 Select Bus Service (SBS) routes, operated by non-party, MTA Bus Company (MTABC). Neither MTA, NYCTA, or non-party MTABC, performed or entered into any construction contracts for work performed at the subject intersection. The closest construction work performed by MTA or NYCTA near the subject location was for the installation of SBS fare machines located about 1,500 feet south of the subject intersection. As a general matter, bus planning is done by NYCTA and MTABC as liaison to the NYC Department of Transportation (DOT). NYCTA and MTA are responsible for procuring and operating the SBS buses. However, the DOT is responsible for, inter alia, constructing and maintaining the bus lanes, traffic signals, bus stops, and bus shelters.

Defendant, Hellman Electric Corp (Hellman) opposes the instant motion on the grounds that Wyss testified that NYCTA had input on the construction placement for bus lanes in the area where Plaintiff's accident occurred. Additionally, their employee, Robert Thompson, performed inspections of the construction on behalf of NYCTA and MTA. Accordingly, the affidavits proffered by Wyss conflict with her testimony and create an issue of fact sufficient to defeat summary judgment.

Wyss testified that Robert Thompson, a DOT Transit employee, would conduct inspections of the installation of fare machines and bus stop placement and installation. She further testified that aside from fare machine installation, NYCTA and MTA were not involved in any other construction at the subject location. Wyss' affidavit clarifies that the inspections relate to ensuring improvements are in accordance with the implementation of SBS service. The inspections do not relate to the performance of actual construction.

Thus, the question appears to be whether the movants' inspection of a project for its own limited purposes creates a duty owed to the Plaintiff. Hellman fails to cite to any authority which supports that NYCTA's inspections affirmatively impose a duty to Plaintiff. Consequently, the Court finds that the inspections did not create a duty (see generally Matty v. Temco Serv. Indus., 253

A.D.2d 415 [2d Dept 1998]; Gluck v. Pinkerton New York Racing Sec. Service, Inc., 96 A.D.2d 548 [2d Dept. 1983].

The complaint also alleges that the NYCTA and MTA created the condition. No evidence was proffered to establish that the NYCTA created the defect or caused it through some special use (see Pratt v. Villa Roma Country Club, Inc., 277 AD 2d 298, 299[1st Dept 2000] ("No ordinance or statute is alleged here. Thus, it was incumbent upon the plaintiffs to raise a triable issue of fact that the defendant either created or caused the defective condition, or derived a special benefit from the abutting property unrelated to public use . . . . Since the plaintiffs failed to come forward with any opposing evidence demonstrating that the defendant created or caused the defective condition, or made a special use . . . the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint").

Since the NYCTA does not own or control and is not statutorily obligated to maintain and repair the public roads, even those located at bus stops, it has established its prima facie entitlement to summary judgment, as a matter of law.

Accordingly, the motion is granted and the complaint is dismissed as against MTA and NYCTA.

Dated: August 8, 2023

  
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KEVIN J. KERRIGAN, J.S.C.

