

Griffin v New York City Tr. Auth.

2023 NY Slip Op 33116(U)

September 5, 2023

Supreme Court, New York County

Docket Number: Index No. 451819/2016

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

SONYA GRIFFIN,
INDEX NO. 451819/2016
MOTION SEQ. NO. 002

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY

DECISION + ORDER ON
MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

were read on this motion to/for JUDGMENT - SUMMARY

For the reasons that follow, Defendants NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY's motion to dismiss pursuant to CPLR §3211 and summary judgment pursuant to CPLR §3212 is denied.

This personal injury matter arises out of a November 17, 2015 incident on the downward subway escalator for the J subway line at the Fulton Street subway station near the William Street entrance/exit in Manhattan. The Plaintiff, SONYA GRIFFIN, alleges that she was caused to trip and fall due to an escalator that was defective, very fast moving and jerking escalator. (NYSCEF Doc. 63).

TRANSIT moves for dismissal of the complaint alleging that Plaintiff has failed to state a cause of action and that TRANSIT is entitled to summary judgment since there are no triable issues of fact.

As to that branch of the motion seeking dismissal of the complaint for failing to state a cause of action, in giving the Plaintiff the benefit of every possible inference, the Plaintiff's complaint alleges a negligence cause of action with facts alleging that her injury was caused by TRANSIT's failure to properly maintain and operate the escalator. (see CPLR §3211 (a)(7); Guggenheimer v. Ginzburg, 43 NY2d 268 [1977]; Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc., 37 NY3d 169 [2021], quoting Leon v.

Martinez, 84 NY2d 83 [1994] holding that dismissal pursuant to CPLR §3211 is warranted only after first giving the pleadings a liberal construction, accepting the alleged facts in the complaint as true, giving a plaintiff the benefit of every possible favorable inference, and then finding that the facts do not fit within any cognizable legal theory that allow for enforceable right of discovery). Therefore, the motion to dismiss pursuant to CPLR §3211 is denied.

As to the that branch of the motion seeking summary judgment, TRANSIT submits Plaintiff's statutory hearing and deposition transcript (NYSCEF Doc. 66, 67), the deposition transcripts of four TRANSIT employees/former employees and other records and documents (NYSCEF Doc. 68, 69, 70, 71, 72, 73, 74, 75).

CPLR §3212 provides any party in any action, including in a negligence action, to move for summary judgment. (CPLR §3212 [a], *Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853 [1974]). The party seeking summary judgment, even if unopposed, has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form (see CPLR §3212 [b], *Voss v Netherlands Ins. Co.*, 22 N.Y.3d 728, 734, 8 N.E.3d 823 [2014], *Giuffrida v Citibank Corp.*, 100 N.Y.2d 72, 81, 790 N.E.2d 772 [2003], *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324–25, 501 N.E.2d 572, 574 [1986], see also *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Only "...once this showing has been made... [does] the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action". (*Alvarez* 68 N.Y.2d at 324).

TRANSIT asserts in its Statement of Material Facts, that "there is no evidence of actual or constructive notice of the condition which Plaintiff alleges caused her injuries, nor is there any evidence that the AUTHORITY allowed the allegedly hazardous condition to remain for an unreasonable length of time or that the AUTHORITY created the condition." (NYSCEF Doc. 59). Yet upon review, TRANSIT has not met its high burden of establishing entitlement to judgment as a matter of law, dispelling triable issues of fact. (*see Alvarez supra*).

Although TRANSIT's papers point to culpable behavior of Plaintiff such as her testimony that she was carrying a bag with food and perhaps contributed to her fall, such a claim is speculative without any admissible evidence supporting such a theory. Moreover, TRANSIT's position that it had no notice of the condition appears to be undermined by TRANSIT's own records. In opposition to the motion, the Plaintiff relies upon TRANSIT's outage reports regarding

the subject escalator, ES367, and relies upon affidavit from expert Patrick Carrajat, who reviewed the outage reports as well as the collective deposition testimony in this matter. The Carrajat Affidavit avers that on February 21, 2014 there was an incident in which someone fell down the escalator, sustaining injury. Upon inspection, no defect was apparently found. However, on March 21, 2014 there was a problem with the escalator not running and apparently further investigation was needed. Then on March 23, 2014 another customer fell down the escalator. The escalator was taken out of service the next day. (NYSCEF Doc. 81, 82). It does not appear that the issues with escalator ES367 were isolated to these two incidents. The Carrajat Affidavit also avers that in the two years prior to the Plaintiff's accident, there were multiple outages attributed, in part, to break malfunction, as well as other stoppages in the escalator's service. Carrajat avers that in the two years prior to the accident, the records reflect that the escalator had an outage every three days and was shutting down every nine days. (NYSCEF Doc. 81, 82). Neither of the TRANSIT employees that conducted an inspection of the subject escalator following this incident had a specific recollection of their inspection or whether they relied upon the outage history in performing their inspection. (NYSCEF Doc. 70, 72)

On a motion for summary judgment, it is not enough for a defendant to identify problems or issues with a plaintiff's negligence case. Rather, it is the defendant's burden to show that its alleged negligence was not the proximate cause of the plaintiff's accident. (*See Hairston v. Liberty Behav. Mgmt. Corp.*, 157 A.D.3d 404, 405, 68 N.Y.S.3d 439, 440 [1st Dept 2018]; *Artalyan, Inc. v. Kitridge Realty Co.*, 79 A.D.3d 546, 547, 912 N.Y.S.2d 400 [1st Dept 2010]). Here, TRANSIT has not show that it is free of negligence for causing this incident. Rather, the evidence, including TRANSIT's own records, appears to show a history of stoppages and outages of the subject escalator as well as two prior incidents resulting in an accident with a customer. Accordingly, as there are questions of fact as to TRANSIT's notice of the alleged condition and whether the escalator was properly working at the time of the accident, TRANSIT's motion for summary judgment is denied.

Accordingly, it is hereby

ORDERED that the Defendants' motion for summary judgment is denied; and it is further

ORDERED that counsel for the Defendants 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 within; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

9/5/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

HON. DENISE M. DOMINGUEZ
DENISE M. DOMINGUEZ
J.S.C.