

Mackhanlall v Metropolitan Tr. Auth.

2024 NY Slip Op 32452(U)

July 17, 2024

Supreme Court, New York County

Docket Number: Index No. 158869/2020

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 35

Justice

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INDEX NO. 158869/2020

SAMANTHA MACKHANLALL

MOTION SEQ. NO. 003

Plaintiff

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, NEW
YORK CITY TRANSIT AUTHORITY D/B/A MTA NEW YORK
CITY TRANSIT

**DECISION AND ORDER ON
MOTION**

Defendants

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100, 101, 102, 103, 105

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, Plaintiff's motion to reargue is granted, and upon reconsideration Plaintiff's motion to strike and/or compel discovery is granted in part and denied in part.

Background

This personal injury matter arises out of an incident at the 42nd Street subway station in Manhattan on October 18, 2019. Plaintiff alleges she was stuck between two subway car doors and then dragged approximately 360 feet along the platform by a northbound E subway train (NYSCEF Doc. 1).

Plaintiff's underlying motion sought to strike Defendants' answer and/or to compel disclosure of an unredacted copy of Defendants' System Safety Report concerning the subject incident and a copy of the train conductor's post-accident records (Motion Seq. 2). Plaintiff's motion was denied as this Court found that the good faith affirmation was not in compliance with 22 NYCRR 202.7[c] and court rules (NYSCEF Doc. 62).

Motion to Reargue

Pursuant to CPLR 2221, a motion to reargue should be granted upon a showing of overlooking or misapprehending the facts presented or exiting law (CPLR 2221[d][2]). Upon a review, Plaintiff's affirmation of good faith labeled "affirmation" rather than affirmation of good faith was overlooked (NYSCEF Doc. 77). There Plaintiff established that a good faith attempt to resolve the discovery issue was made between the parties prior to filing the motion and in compliance with Court rule ¹. Therefore, the motion to reargue is granted and the motion will be addressed on the merits.

Plaintiff's Motion to Strike or Compel

Plaintiff's initial motion sought to strike Defendants' answer for the willful failure to provide an unredacted Systems Safety Report and the disciplinary records of the subway's conductor, or alternatively, to compel disclosure of same.

Upon review, Plaintiff has not demonstrated that Defendants' failure to provide the discovery was willful, contumacious or in bad faith (*see Scher v. Paramount Pictures Corp.*, 102 AD3d 471 [1st Dept 2013]; *Pezhman v. Dep't of Educ. of City of New York*, 95 AD3d 625 [1st Dept 2012]). Based on the parties' respective positions, and their ability to complete all other aspects of discovery, Defendants have not willfully refused to participate in the discovery process. Moreover, Defendants duly objected to the disclosure rather than simply ignore discovery requests or refuse to provide them. In addition, the parties made efforts to resolve these issues on their own prior to seeking judicial intervention in accordance with court rules.

¹ Parties are encouraged to file a single and concise affirmation of good faith to avoid confusion and delays in the future.

As to that branch of Plaintiff's motion seeking to compel disclosure of an unredacted Systems Safety Report, the motion is granted. Plaintiff has shown that the report is material and necessary in the prosecution of this matter. Although Defendant's Systems Safety Report may include an analysis of the incident and/or offer a conclusion of the incident based upon Defendants' internal policies, rules and guidelines, and despite that such internal rules may impose standard of care exceeding ordinary care, the potential future inadmissibility of the Systems Safety Report at the time of trial does not mean it is not discoverable (*see Gerardo v. Breton*, 212 AD3d 461 [1st Dept 2023]; *see also Branham v. Loews Orpheum Cinemas, Inc.*, 31 AD3d 319 [2006], *aff'd*, 8 NY3d 931 [1st Dept 2007]). Accordingly, Defendants are directed to produce an unredacted version of the Systems Safety Report within 30 days from the entry of this Order.

As to that branch of Plaintiff's motion seeking to compel the disclosure of all records related to the non-party conductor's disciplinary hearing and/or suspension, the motion is denied. Generally, the personnel records of an employee who was acting in the scope of their employment when an accident occurs are not discoverable in a negligence action against a public entity and where plaintiff is not lawfully and with good cause seeking a cause of action under negligence hiring and retention (*see e.g. Trotman v. New York City Transit Auth.*, 168 AD3d 1116 [2d Dept 2019]; *Parkinson v. FedEx Corp.*, 184 AD3d 433 [1st Dept 2020]). Here, Plaintiff brings an action for negligence against Defendants and the complaint also has wording for a claim for respondent superior, thus Plaintiff has not shown that disciplinary files of the conductor are material and necessary for the prosecution of this negligence action. (*Trotman*, 168 AD3d 1116). Plaintiff's allegations that the records will show why the disciplinary board suspended the conductor do not suffice (*see Parkinson* 184 AD3d). Yet, it is uncontroverted that the conductor was employed by Defendants and was acting in the scope of this employment at the time of this incident. It is also

uncontroverted and was represented to this Court during a conference that all reports for this incident have been disclosed (NYSCEF Doc. 52, 75), that multiple depositions on behalf of Defendants have been conducted, including that of the conductor (NYSCEF Doc. 71), and that a video depicting this incident has been turned over to Plaintiff. As Plaintiff does not establish how the conductor's disciplinary records are material and necessary, that branch of the motion seeking is denied.

Accordingly, it is hereby

ORDERED that Defendants' motion to reargue is granted; and it is further


ORDERED that upon reargument, that branch of the motion to strike Defendants' answer is denied; and it is further

ORDERED that upon reargument, that branch of the motion to compel disclosure of an unredacted Systems Safety Report is granted and shall be exchanged within 30 days of the filing of this Order with notice of entry and that branch of the motion which seeks to compel the disclosure of the conductor's disciplinary file is denied; and it is further

ORDERED that, within 20 days from the entry of this Order, Defendants shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the Court the General Clerk's 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)].

7/17/2024

DATE


DENISE M DOMINGUEZ, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: