

Thomas v City of New York

2025 NY Slip Op 34426(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 501074/2018

Judge: Lisa S. Ottley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

-----X
CLAUDE THOMAS as Administrator De Bonis Non of The
Estate of Louis Gray, Jr. and CLAUDE THOMAS, individually

Mot. Seq. # 4

Index # 501074/2018

Plaintiff,

DECISION AND ORDER

-against-

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

Defendants.

-----X
HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of these Notice of Motion for Summary Judgment submitted on January 13, 2025.

Papers	Numbered
Notice of Motions and Affirmation	1&2 [Exh. A-P]
Affirmation/Affidavit in Opposition.....	4 [Exh. 1]
Reply Affirmations.....	5
Memorandum of Law.....	3

Defendants, The City of New York and New York City Transit Authority (hereinafter, “the defendants,” “the City,” and/or “NYCTA”), move for summary judgment (Motion Seq. # 4) pursuant to CPLR § 3212 dismissing plaintiff’s complaint on the grounds that: (1) the City was an out-of-possession lessor that retained no right to supervise or control the operations of the subway system, (2) the plaintiff’s decedent nor his employer NYCTA, were performing construction, demolition, excavation or repair at the time of the decedent’s accident, (3) defendants did not direct, control, or supervise any of plaintiff decedent’s work, and (4) defendants did not cause or create the alleged hazardous condition or have actual or constructive notice of the alleged hazardous condition pursuant to Labor law § 200; placing caution lamps on the top of subway tracks does not fall within the scope of Labor Law § 240(1) and § 241(6) and there is no violation of 240(1) because plaintiff’s decedent did not fall from a height and was not struck by a falling object; the plaintiff failed to identify a violated Industrial Code provision subsection pursuant to Labor Law § 241(6); and worker’s compensation benefits precludes a lawsuit by an employee (plaintiff’s decedent) against an employer (NYCTA) for injuries in the course of employment. The plaintiff only opposes the dismissal of plaintiff’s Labor Law § 200 and common law negligence claims against the City of New York.

Accordingly, the defendants' motion (Mot. Seq. #4) for summary judgment dismissing plaintiff's complaint in its entirety as to NYCTA is hereby granted.

Accordingly, the defendants' motion (Mot. Seq. #4) for summary judgment dismissing plaintiff's complaint as to Labor Law §§ 240(1) and 241(6) as to the City is hereby granted.

This action arises as a result of an accident which occurred on November 3, 2016, while plaintiff's decedent, Louis Gray, Jr., was working for NYCTA as a track worker/flagger on the southbound subway tracks between the Church Avenue and Fort Hamilton Parkway subway stations located in Brooklyn, New York. The decedent was struck by a southbound G subway train, pinning him against the train and a bench wall. At the time of the accident, Mr. Gray was placing yellow caution lamps on the subway train tracks to warn incoming trains that workers for non-party, Siemens Transport System (hereinafter, "Siemens"), were crossing the tracks to access a control room to test computer software. The caution lamps were being set up to allow personnel from Siemens to cross the train tracks. The owner of the subject site is the City of New York, which leased the site to NYCTA based on a lease agreement, dated June 1, 1953.

Discussion

It is well settled that in order to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, *Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action or tender an acceptable excuse for his failure and submission of a hearsay affirmation by counsel alone does not satisfy this requirement." See, *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). A motion for summary judgment cannot be defeated by a "shadowy semblance of an issue." See, *Chaplin Associates v. Globe Manufacturing*, 34 N.Y.2d 338, 357 N.Y.S.2d 478 (1974).

Labor Law § 200 and Common Law Negligence

The City argues that it was an out-of-possession lessor that retained no right to supervise or control the operations of the subway system based upon a lease agreement between the City and NYCTA, dated June 1, 1953. According to the lease, the City leases to the NYCTA "all of the transit facilities now owned or hereafter acquired or constructed by the City and any other materials, supplies and property incidental to or necessary for the operation of such transit facilities" and authorizes the NYCTA "to take jurisdiction, control, possession and supervision of such transit facilities, materials, supplies and property on the effective date." As such, the City leased the operation, control, and maintenance of the subway system to NYCTA.

The City argues that the plaintiff's decedent was not within the class of construction workers that Labor Law § 200 was enacted to protect since plaintiff's decedent nor his employer NYCTA, were performing construction, demolition, excavation or repair at the time of the decedent's accident.

The City contends that plaintiff's decedent's accident, while working as an NYCTA Flagger and being struck by a subway train operated by an NYCTA train operator, did not arise from a defective condition inherent on the property, but rather, arose as a result of the allegedly defective means utilized by him to perform his work. The City argues that since the accident arose solely out of the means and methods of NYCTA's work, it is not liable under Labor Law § 200 because it is free of negligence and did not control or supervise plaintiff, his employment activities, or the way he performed his work on the date of the accident and was not involved with the way plaintiff placed yellow caution lamps on the subway tracks while NYCTA trains were operating on the tracks.

The City further also argues that it did not cause or create the alleged dangerous condition and did not have actual notice of the alleged condition (failing to notify the plaintiff's decedent of an upcoming train while he was on the tracks) since the City was not doing the work on the subway when the accident happened and did not provide the NYCTA flaggers with any tools, equipment, material, or labor at this location. The City did not have constructive notice of the alleged condition because the time between when the NYCTA train left Fort Hamilton Parkway subway station and until the time of the accident, happened within minutes, if not seconds, which is insufficient to provide notice of the condition to the City who had no employees on the track, let alone the NYCTA Flaggers, who were on the tracks and had no prior notice of the condition.

In opposition to defendants' motion, plaintiff argues that a Labor Law § 200 claim is viable against the City even as an out-of-possession landowner as (1) Labor Law § 200 applies to all workplace accidents, not only those concerning construction, demolition, excavation, or repair; and (2) questions of fact exist as to whether the City either created or had notice of the alleged hazardous conditions, namely, a defective blind curve and inadequate lighting within the subway tunnel. Plaintiff argues that his Labor Law § 200 and common law negligence claims are not based on the employer's methods or materials on the job, which requires a supervisory control analysis, but rather, on an alleged dangerous condition on the work site, which requires a creation and notice analysis. The plaintiff further argues that the defective/hazardous condition that caused plaintiff's accident was not solely a lack of notice of an oncoming train, but rather several issues when coupled together resulted in this accident. In support, plaintiff has pointed to the deposition testimony of the decedent's step-son, Claude Thomas, and the train operator, Jamal Dembert, regarding the curve in the subway tunnel, the physical circumstances in the area, specifically the blind spot in the "guarded curve" of the tunnel, and the inadequate lighting in the area. According to plaintiff, it can reasonably be inferred that the curve prohibited Mr. Dembert from seeing the track workers at a sufficient distance to timely stop the train and avoid contact, and sufficient lighting would have aided Mr. Dembert's vision and the visibility of the track workers. The City has not provided any evidence concerning the blind curve or the lack of lighting/illumination in the area pre-lease, which are all alleged hazardous conditions that contributed to the accident.

In reply, the City argues that the plaintiff alleges the dangerous conditions of a blind curve and inadequate lighting for the first time in opposition, which is improper as a matter of law.

These dangerous conditions were not raised in plaintiff's notice of claim complaint, or bill of particulars and plaintiff cannot assert a new negligence theory for the first time in opposition to the City's motion for summary judgment to attempt to defeat the motion. The notice of claim, complaint, and bill of particulars vaguely alleged that the City failed to provide the plaintiff's decedent with a safe place to work and failed to notify the plaintiff's decedent of an upcoming NYCTA subway train. There are no claims by the plaintiff that the City created or had notice of the blind curve and inadequate lighting. The City further argues that the plaintiff's attempts to use hearsay statements through the decedent's stepson, Claude Thomas, that "Transit" was given notice of a "blind curve" is improper and insufficient to raise an issue of fact as to lack of notice. It is insufficient because the alleged complaint of a "blind curve" comes from Thomas' deposition testimony that he heard from newspapers and his mother that someone said that the accident happened because "the train was not supposed to come down that tunnel." Lastly, the City argues that there was lighting in the form of flashlights carried by the NYCTA flaggers and the train operator saw the lamps the flaggers placed on the tracks to warn incoming trains after he came around the curve.

Labor Law § 200 is a codification of the common-law duty of an owner or general contractor to provide employees with a safe place to work. See, Cooper v State of New York, 72 A.D.3d 633, 899 N.Y.S.2d 275 (2nd Dept., 2016). Cases involving Labor Law § 200 generally fall into two categories: those where workers were injured as a result of dangerous or defective conditions at a work site and those involving the manner in which the work was performed. See, LaGiudice v Sleepy's Inc., 67 A.D.3d 969, 890 N.Y.S.2d 564 (2nd Dept., 2009). Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it. See, Ortega v. Puccia, 57 A.D.3d 54, 866 N.Y.S.2d 323 (2nd Dept., 2008). Alternatively, where the injury arises out of defects or dangers in the methods or materials of the work, the property owner's potential liability hinges on his or her authority to supervise the work. See, Chowdry v. Rodriquez, 57 A.D.3d 121, 867 N.Y.S.2d 123 (2nd Dept., 2008). To meet the initial burden on the issue of lack of constructive notice, the defendants must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell. See, Gray v Lifetitz, 83 A.D.3d 780, 920 N.Y.S.2d 693 (2nd Dept., 2011).

In this case, plaintiff's claim appears to arise from alleged defects or dangerous conditions of a subway tunnel with a blind curve and inadequate lighting. As such, the City did not sustain a prima facie showing of entitlement to summary judgment dismissing the plaintiff's complaint as Labor Law § 200 and common-law negligence since defendants failed to establish that they did not have constructive notice of the alleged dangerous conditions. See, Medina v La Fiura Dev. Corp., 69 A.D.3d 686, 895 N.Y.S.2d 98 (2nd Dept., 2010). The City offered no evidence to establish when the subway tunnel in question was last inspected prior to the time of the accident. See, Titov v V&M Chelsea Prop., LLC, 230 A.D.3d 614, 216 N.Y.S.3d 677 (2nd Dept., 2024). Moreover, in opposition, plaintiff raised triable issues of fact as to whether the defendants created or had actual or constructive notice of the allegedly dangerous conditions which caused the plaintiff's accident. See, Linkowski v City of New York, 33 A.D.3d 971, 824 N.Y.S.2d 109 (2nd Dept., 2006). Plaintiff offered the deposition testimony of the train operator, Mr. Dembert, in which he

testified that most places within the tunnels of the G line are without lights; "it's so dark, it's just dark;" the accident occurred on a right hand "guarded curve;" and the accident occurred as he was coming around the curve. According to the deposition testimony of Mr. Thomas, the safety hazard was the curve in the tunnel; the curve is a blind spot; his step-father could not be seen because of this blind spot; both Mr. Thomas and his mother were informed of this curve and blind spot by Transit employees; and they were advised that this blind spot was well known amongst the Transit workers, and numerous complaints had been made regarding this safety hazard. As such, there is a triable issue of fact as to whether defendants created or had actual or constructive notice as to the alleged defective and dangerous conditions of a blind curve and inadequate lighting in a subway tunnel.

Accordingly, defendants' motion (Mot. Seq. # 4) for summary judgment dismissing plaintiff's complaint as to Labor Law § 200 and common law negligence as to the City is hereby denied.

Based on the foregoing, it is hereby

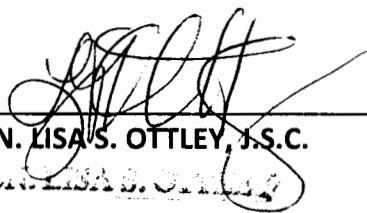
ORDERED, that defendants' motion (Seq. # 4) for summary judgment dismissing plaintiff's complaint as to Labor Law §200 and common law negligence as to the City is hereby denied, and it is further

ORDERED, that defendants' motion (Mot. Seq. # 4) for summary judgment dismissing plaintiff's complaint in its entirety as to NYCTA is hereby granted, and it is further

ORDERED, that defendants' motion (Mot. Seq. #4) for summary judgment dismissing plaintiff's complaint as to Labor Law §§ 240(1) and 241(6) as to the City is hereby granted

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
November 13, 2025


HON. LISA S. OTTLEY, J.S.C.
KINGS COUNTY CLERK
FILED
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