

Brophy v New York City Tr. Auth.

2026 NY Slip Op 30318(U)

January 28, 2026

Supreme Court, New York County

Docket Number: Index No. 157083/2018

Judge: Richard Tsai

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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. RICHARD TSAI PART 21

Justice

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PAUL BROPHY,
Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

INDEX NO. 157083/2018

MOTION DATE 12/18/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 28-43, 45-47, 49-53

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is hereby ORDERED that plaintiff's motion to compel discovery and/or for discovery sanctions is GRANTED TO THE EXTENT that, within sixty (60) days of being served with a copy of this decision and order with notice of entry, defendant shall provide responsive documents for items 4, 5, 7, 9, and 10 from plaintiff's notice for discovery and inspection dated September 2, 2021 (exhibit A in support of motion [NYSCEF Doc. No. 31]) and responsive documents to plaintiff's notice for discovery and inspection dated March 26, 2025 (exhibit J in support of motion [NYSCEF Doc. No. 40]), and the motion is otherwise denied.

In this personal injury action, plaintiff alleges that on January 4, 2018, at approximately 2:45 p.m., she slipped and fell on snow and ice while he was "walking down the stairs of the subway Entrance/Exit located at Chambers Street/W. Broadway, New York, New York" (complaint [NYSCEF Doc. No. 1] ¶ 7). Plaintiff's counsel contends that the stairs and landing "were unsalted and only partially shoveled from snow and ice on said stairway and landing" (affirmation of plaintiff's counsel in support of motion [NYSCEF Doc. No. 29] ¶ 3).

On this motion, plaintiff is seeking:

- a. "Substantive responses" to for items 4, 5, 7, 9, and 10 from plaintiff's notice for discovery and inspection dated September 2, 2021;
b. "Substantive responses" to plaintiff's notice for discovery and inspection dated March 26, 2025; and
c. "An EBT of someone with knowledge of the Division of Station Environment Operations Winter Operations Manual 2017-2018, ('Manual') including pre-storm planning and different 'plans' that are supposed to be implemented based on expected snow conditions" (plaintiff's supplemental memorandum in further support of motion [NNYSCEF Doc. No. 49] at 2).

Defendant has opposed plaintiff's demand for an additional deposition, per point number (c) above, but has not opposed plaintiff's demands for document discovery as per point numbers (a) and (b) above.¹

DISCUSSION

CPLR 3101 states that there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." "[M]aterial and necessary" are "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). "[T]he acid test for disclosure of information is not whether the party can make out a prima facie case without the evidence, but whether he or she can make out a more persuasive case with it" (6 Weinstein-Korn-Miller, NY Civ Prac CPLR ¶ 3101.08 [2024]).

"It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Vyas v Campbell*, 4 AD3d 417, 418 [2d Dept 2004]; see also *Twenty Four Hour Fuel Oil Corp. v Hunter Ambulance*, 226 AD2d 175-176 [1st Dept 1996]). However, "[u]nder our discovery statutes and case law, competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party" (*Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954 [1998] [quotation marks and citation omitted]).

I. Branch of Motion for Document Discovery

With regard to points (a) and (b) seeking document discovery, there is no dispute that defendant failed to respond to these demands within twenty days, pursuant to CPLR 3122 (a) (1). Thus, defendant "waived objection based on any ground other than palpable impropriety or privilege" (*DiMaggio v Port Auth. of New York and New Jersey*, 228 AD3d 426, 427 [1st Dept 2024]).

Having reviewed these demands, none of them would appear to be palpably improper or seek privileged information. Rather, the demands generally appear to seek information related to the snow remediation efforts taking place around the time of the subject accident.

¹ The court notes that, pursuant to the status conference order of August 21, 2025, this court granted defendant's "application for a further extension of time to oppose plaintiff's motion . . . only as to opposition for an additional EBT of defendant" (NYSCEF Doc. No. 44 at 1). The court reasoned that while defendant had "demonstrated a potentially meritorious defense for the additional EBT of a witness, based on the excerpts that were flagged to the court" at that status conference, the court "does not find that defendant has any potentially meritorious defense as to the propriety of plaintiff's demands related to items 4, 5, and 10 of the D&I dated 9/2/21, that those demands were palpably improper on their face" (*id.* at 1-2)

Therefore, the court directs defendants to provide responsive documents for these demands.

II. Branch of Motion for Additional Deposition

Preliminarily, there is no dispute that defendant has already produced three employee witnesses in this action. Thus, as the party seeking an additional deposition, plaintiff must make a "detailed showing" of the necessity for taking additional depositions, in that the witnesses already deposed had "insufficient information," and that there is a "substantial likelihood that those sought to be deposed possess information necessary and material to the prosecution of the case" (*Alexopoulos v Metropolitan Transp. Auth.*, 37 AD3d 232, 233 [1st Dept 2007]).

Here, plaintiff takes issue with the last witness produced: Benjamin Matos. Plaintiff asserts that Matos "was supposed to have knowledge of the Division of Station Environment Operations Winter Operations Manual 2017-2018" but that he was "unable to adequately testify to anything regarding the policy or procedure for preparing for a snowstorm or concerning the provided documents" (affirmation in support of motion [NYSCEF Doc. No. 29] ¶ 7).

During his deposition, Matos testified that he was employed as a supervisor since 2015, and that before then he was employed as a station agent and cleaner (with his NYCTA employment starting in 2006) (plaintiff's exhibit E [NYSCEF Doc. No. 35], Matos EBT at 11, line 10 through 13, line 19). Matos testified that there were essentially two types of supervisors: "supervisors on the road and instructor" (*id.* at 15, lines 13-14). Matos explained that he was an instructor and that his main duty was "to instruct employees on doing their jobs proper and safely" (*id.* at 15, lines 2-5). On the other hand, a road supervisor "actually works with subordinates" (*id.* at 15, lines 21-22).

When the topic of the Winter Operations Manual came up, Matos initially testified that he "heard of it" but was not "familiar with" the manual (*id.* at 38, line 12 through 39, line 12). Upon further review of the manual, Matos testified that he had "seen" the manual and that "[t]his is something management creates and it's just policies and procedures on snow removal" but that "[w]e don't use this manual" (*id.* at 45, line 8 through 46, line 13). Matos further explained that any Transit employee could view the Winter Operations Manual, but "[w]ho can refer back this manual can be any road supervisor or superintendent" and that for the purpose of training employees he relied on the "[s]tation cleaning induction book" which "has a brief introduction into removing snow and what you are supposed to do when you report on-duty" (*id.* at 46, line 23 through 48, line 3).

When shown page 18 of the Winter Operations Manual, Matos testified that he was familiar with the Department of Subways Winter Operations Plan, and that it is a document that you can refer to if "you are not too sure about your job description and

what they are supposed to do" and that it related to snow removal (*id.* at 48, line 8 through 49, line 49).

Having reviewed Matos entire deposition transcript, the court finds that Matos generally had the ability to explain what the procedures were for snow removal and mitigation once the snow started to fall in relation to the manual (e.g. he explained about putting down salt, shoveling the stairs, referencing the "snow checklist", overtime and snow bonuses, etc.) (*id.* at 26, line 7 through 27, line 2, at 29, line 13 through 32, line 9, at 53, line 22 through 57, line 9, at 74, line 23 through 79, line 24). However, he could not speak to the preparations done by management when say, a snowstorm is "forecast like four days ahead of time or 24 hours ahead of time" (*id.* at 22, lines 17-20; see also plaintiff's supplemental memorandum in support of motion [NYSCEF Doc. No. 49] at 4 [complaining of same]). Therefore, the court finds that plaintiff has failed to make a detailed showing that Matos had insufficient information (*Alexopoulos*, 37 AD3d at 233).

Further, even if the court were to find that Matos had insufficient information, plaintiff has not established that "substantial likelihood" that the proposed additional deposition would produce information "necessary and material to the prosecution of the case" (*id.*). To this point, plaintiff states that they are seeking "[t]estimony from either 'Road Supervisor' or someone from 'upper management' concerning pre-storm planning and different 'plans' that are supposed to be implemented based on expected snow conditions" (supplemental memorandum in support of motion at 5). Plaintiff argues that such testimony is material and necessary because "it would demonstrate what Defendant knew concerning the weather forecast prior to Plaintiff's accident, what procedures should have been implemented, and what procedures were actually implemented, along with what updates were provided during the implementation of the plan" (*id.*).

The court does not find that such testimony would be material and necessary.

In a personal injury action where the defective condition is alleged to be snow and ice, the premises owner has a duty to remove snow and ice within a reasonable period of time after cessation of a storm (see e.g. *Solazzo v New York City Tr. Auth.* 6 NY3d 734, 735 [2005]). Thus, the inquiry focuses on the acts or omissions of the premises owner *after* the storm. However, the additional deposition sought here bears on what, if anything, the premises owner did *before* the storm. This court is unaware of a snow and ice case where evidence of what the property owner did in the days before an approaching snowstorm was considered relevant to the liability of the premises owner, and plaintiff has not cited such a case here. There is no cause of action against a premises owner solely for negligent preparation for a storm, as the duty to remove snow and ice does not arise until after a storm has ended.

Therefore, this branch of plaintiff's motion seeking an additional deposition is denied.

ENTER:



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1/28/2026

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE