

Moskonas v New York City Tr. Auth.
2026 NY Slip Op 31951(U)
May 6, 2026
Supreme Court, New York County
Docket Number: Index No. 154514/2022
Judge: Richard Tsai
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI **PART** **21**

Justice

-----X

EMANUEL MOSKONAS

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

-----X

INDEX NO. 154514/2022

MOTION DATE 11/12/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1, 5, 19-35, 38 were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, it is **ORDERED** that plaintiff’s motion to strike defendant’s answer or an order of preclusion, or in the alternative to compel defendants to respond to plaintiff’s discovery demands is **GRANTED IN PART TO THE EXTENT THAT**, within 45 days, defendants must provide:

- (1) a *Jackson* affidavit (see *Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992]) related to the search of records of repair, maintenance, and inspection of the P7A stairwell at the subway station at 59th Street & Lexington Avenue, which shall include a search for any non-conformity lists containing any defects of the P7A stairwell and for photographs of the P7A stairwell for the period of two years prior to January 20, 2022;
- (2) a copy of the cleaning schedules that was in effect for the period of three years prior to January 20, 2022;
- (3) a *Jackson* affidavit for the search any records of inspection, maintenance, and repair referencing a “leak” or “water” with respect to stairwell P7A for the period of two years prior to January 20, 2022; and it is further

ORDERED that plaintiff’s motion is otherwise denied.

Plaintiff moves for an order striking defendant’s answer or an order of preclusion, due to defendant’s failure to supplement responses to plaintiff’s discovery demands. Alternatively, plaintiff seeks to compel defendant to supplement its responses. Defendant opposes the motion.

Oral argument was held on September 23, 2025 on the stenographic record (Kitty S. Acosta, court reporter).

The complaint alleges that, on January 20, 2022, plaintiff slipped and fell on a stairwell identified as P7A in the subway station at 59th Street and Lexington Avenue in Manhattan (see NYSCEF Doc. No. 1, complaint ¶¶ 14-16). According to the bill of particulars, stairwell P7A was the staircase of the uptown N, R, & W lines at the station (see NYSCEF Doc. No. 5, bill of particulars ¶ 5). Plaintiff's counsel stated at oral argument that there was water on the staircase leaking from the ceiling above (tr. at 4, lines 7-8).

On or about November 17, 2022, plaintiff served Combined Demands for Discovery, which included a demand for all maintenance, repair and inspection records for a period of three years prior to the date of incident (see plaintiff's Exhibit A in support of motion [NYSCEF Doc. No. 7]). As relevant to this motion, plaintiff's counsel explained at oral argument that the second and third paragraphs of plaintiff's Demand for Production and Documents are at issue (see tr., at 5, line 9 through 6 line 3):

PLEASE TAKE FURTHER NOTICE, that pursuant to the demand of the plaintiff you are to produce and permit the undersigned to inspect and copy all maintenance and repair records regarding the subject premises located at the uptown bound station staircase of the "N", "R", and "W" lines at stairwell numbered "P7A" at the 59th and Lexington Avenue subway station in Manhattan for a period of three (3) years prior to January 20, 2022.

PLEASE TAKE FURTHER NOTICE, that pursuant to the demand of the plaintiff you are to produce and permit the undersigned to inspect and copy any and all cleaning records, including schedules of regular cleaning, regarding the subject premises located at the uptown bound station staircase of the "N", "R", and "W" lines at stairwell numbered "P7A" at the 59th and Lexington Avenue subway station in Manhattan for a period of three (3) years prior to January 20, 2022.

(see NYSCEF Doc. No. 7).

By a so-ordered stipulation dated January 5, 2024, defendant New York City Transit Authority (the NYCTA) agreed to respond to plaintiff's Combined Demands dated November 17, 2022 by February 5, 2024 (see plaintiff's Exhibit C in support of motion [NYSCEF Doc. No. 24]). The NYCTA provided a response dated April 8, 2024 (see plaintiff's Exhibit I in support of motion [NYSCEF Doc. No. 30]). With respect to plaintiff's demand for documents, the NYCTA produced a station condition report (see plaintiff's Exhibit F in support of motion [NYSCEF Doc. No. 27]).

Thereafter, plaintiff served a post-EBT demand dated February 21, 2024 (see plaintiff's Exhibit F in support of motion [NYSCEF Doc No. 27]). As relevant to this

motion, plaintiff's counsel explained at oral argument that items 2 and 3 of plaintiff's post-EBT demands dated are at issue (see tr., at 17, line 18 through 18, line 4):

2. Any and all documents including all inspection, maintenance and repair records referencing a "leak" or "water" with respect to the stairwell "P7" from two year prior to the subject accident including the date of accident.
3. The repair, maintenance and inspection records relating to the station condition report exchanged on February 8, 2024.

By an agreed-upon status conference order dated May 30, 2024, defendant agreed "to provide supplemental response to demand for maintenance + inspection records relating to station condition report exchanged on 2/8/24 w/in [within] 30 days" (see plaintiff's Exhibit K in support of motion [NYSCEF Doc. 32]). By a status conference order dated August 1, 2024, defendant was directed "to provide supplemental response to demand for maintenance + inspection records relating to entries related to staircase P7A + P7B [in the] station conditions report exchanged on 2/8/24 w/in [within] 30 days" (see plaintiff's Exhibit L in support of motion [NYSCEF Doc. No. 33]).

According to plaintiff's counsel, on September 6, 2024, the NYCTA exchanged Work Order Tickets for maintenance performed on stairwell P7A (see plaintiff's Exhibit M in support of motion [NYSCEF Doc. No. 34]).

Meanwhile, on July 19, 2024, defendant produced Frederick Batts, a Station Supervisor, for a deposition (see plaintiff's Exhibit N, Batts EBT [NYSCEF Doc. No. 35]). According to Batts, he is assigned to Zone 7A since January 2024 (Batts EBT, at 9, line 22 through 10, line 7). Batts stated that he is a station supervisor for the 59th and Lexington Avenue N/R/W line (*id.* at 13, lines 10-15).

Batts testified that, as a station supervisor, he conducts an inspection "maybe twice a month" (Batts EBT, at 17, line 24 through 18, line 4). When asked if he brought anything to keep track of what he observed, Batts replied,

- 9 A. Well, what we do is we print out a
10 non-conformity list, and we use that as a reference.
11 Q. And what is the non-conformity list?
12 A. It's a list of all the non-conformities on the
13 list for the particular station that you're inspecting.

- 14 Q. Does that non-conformity list come off of
15 something like a station condition report?
16 A. Yeah, we get it from the computer.
17 Q. Okay. Just going back, when you go out with
18 that non-conformity list, do you bring something with
19 you to write note on, a little computer or something to
20 write down? Tell me what you do.
21 A. I write on a list.
22 Q. And then after you write your notes on the
23 list, you then go back to your office and input it into
24 a computer?
25 A. Yes.

(*id.* at 20, lines 9-25). Batts testified that he uses a program called EAM to input notes into the computer, which can then make a work order for that particular problem to be addressed (*id.* at 21, lines 1-3; at 22, line 24 through 23, line 8).

Batts also testified that station agents can also report defects to a station supervisor (see Batts EBT, at 30, lines 19-22). According to Batts, “Most of the time, they take pictures and send it to us, we’ll go see what it is before doing it [generating a non-conformity], but most times, they send photos (*id.* at 31, lines 2-4).

DISCUSSION

Plaintiff’s counsel argues that defendant’s response to the demands for maintenance records was not complete, because the NYCTA did not produce any non-conformity lists and photographs when the NYCTA supplemented its responses to plaintiff’s demand for maintenance, inspection, and repair records. Plaintiff also seeks cleaning records and cleaning schedules (tr. at 7, lines 23-25).

It is not clear from the record that the NYCTA had, in fact, failed to supplement its responses. Batts’s testimony establishes that he used non-conformity lists when he inspected the station. However, Batts testified that he was assigned to the 59th Street subway station in January 2024, after plaintiff’s alleged slip and fall. It is not clear that the station supervisors prior to Batts had used non-conformity lists during their own station inspections. Batts also testified that station agents do send photographs of conditions to a station supervisor, but he did not testify that such photos actually existed for stairwell P7A.

Nevertheless, the discovery sought of the non-conformity lists and photos of stairwell P7A is reasonably calculated to lead to admissible evidence as to whether the

NYCTA had prior notice of a leak condition above stairwell P7A. Batts testified that the non-conformity list is a *defect* non-conformity list, which is sent by a field office for the inspections that the station supervisor must do for the day (Batts EBT, at 23, lines 14-25). Thus, the non-conformity list reflects reported defects that must be inspected. Accordingly, the court directs the NYCTA to conduct a search for any non-conformity lists containing any defects of the P7A stairwell and for photographs of the P7A stairwell for the period of two years prior to January 20, 2022, and to provide a *Jackson* affidavit about the results of the search.

The court similarly directs the NYCTA to conduct a search specifically for any records of inspection, maintenance, and repair referencing a “leak” or “water” with respect to stairwell P7A for the period of two years prior to January 20, 2022, and to provide a *Jackson* affidavit about the results of that search.

The branch of plaintiff’s motion for sanctions against the NYCTA is denied.

Although the NYCTA’s responses to plaintiff’s Combined Demands and to the court’s orders directing the NYCTA to respond to the Combined Demands were belated and piecemeal, the NYCTA ultimately produced a substantial amount of discovery (*Parkinson v FedEx Corp.*, 184 AD3d 433, 434 [1st Dept 2020]).

Plaintiff has failed to demonstrate that defendant’s failure to respond to plaintiff’s post-EBT demands dated February 21, 2024 was willful. As discussed above, it is not clear that non-conformity lists and photographs of any defects of stairwell P7A do, in fact, exist, in addition to from work orders that had already been produced.

ENTER:



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<u>5/6/2026</u>			<u>RICHARD TSAI, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE