

Thorpe v City of New York

2005 NY Slip Op 30491(U)

November 3, 2005

Supreme Court, New York County

Docket Number: 116924/03

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK- NEW YORK COUNTY

PRESENT: Hon. DORIS LING-COHAN, Justice

PART 62

GEORGE THORPE,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY BOARD OF EDUCATION and NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY,

Defendants.

INDEX NO. 116924/03
MOTION DATE
MOTION SEQ. NO. 002
MOTION CAL.NO.

The following papers, numbered 1 to 4 were read on this motion to/for : partial summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits	1,2
Answering Affidavits - Exhibits (Memo)	3
Replying Affidavits (Reply Memo)	4
Cross Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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NEW YORK

Upon the foregoing papers, it is ordered that this motion is denied, for the reasons set forth below.

Background

Plaintiff, George Thorpe, brings this action to recover damages for personal injuries he allegedly sustained on March 17, 2003 when he fell from a window ledge at P.S. 38, located at 232 East 103rd Street in New York, New York. Plaintiff has moved for partial summary judgment on his claim pursuant to Labor Law § 240 (1). This motion has been stayed, by prior orders of this Court, pending a determination of defendants' application, brought by order to show cause, for additional discovery. The relevant facts and procedural developments in this litigation are set forth in the decision and order of this Court granting, in part, defendants' application for additional discovery.

[* 2]

Discussion

Pursuant to Rule 17 of the Rules of the Justices of The New York County Supreme Court, Civil Branch (Non-Commercial Division), all motions for summary judgment must be made no later than 60 days after the filing of the note of issue (see also CPLR 3212 [a]¹). In the instant case, plaintiff filed his motion for partial summary judgment on or about November 12, 2004, more than 60 days after August 10, 2004, when he filed a note of issue and certificate of readiness.

This matter comes squarely within the principles announced by the Court of Appeals in *Brill v City of New York* (2 NY3d 648 [2004]), to prevent the filing of “eleventh-hour summary judgment motions”, a practice that “ignores statutory law, disrupts trial calendars, and undermines the goals of orderliness and efficiency in state court practice” (*id.* at 650-651). In *Brill*, the Court of Appeals concluded that the Supreme Court should not have considered the merits of a summary judgment motion brought by the City of New York almost one year after the filing of the note of issue, as the City gave no explanation for filing the motion after the 120-day limit specified in CPLR 3212 (a). The Court of Appeals stated, “We conclude that ‘good cause’ in CPLR 3212 (a) requires a showing of good cause for the delay in making the motion - a satisfactory explanation for the untimeliness - rather than simply permitting meritorious, nonprejudicial filings, however tardy ... No excuse at all, or a perfunctory excuse, cannot be ‘good cause’” (*Brill v City of New York*, 2 NY3d at 652; *see also Miceli v State Farm Mut. Auto Ins. Co.*, 3 NY3d 725, 726 [2004]; *Perini Corp. v City of New York*, 16 AD3d 37, 40 [1st Dept 2005]).

In the instant matter, plaintiff has failed to provide any reason whatsoever for his delay in moving for partial summary judgment until more than 60 days after filing the note of issue, as prescribed by the Rules of this Court. In view of plaintiff’s failure to establish “good cause” for

¹ CPLR 3212 (a) provides, in pertinent part:

“[t]he court may set a date after which no such motion [for summary judgment] may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown (parenthetical supplied).

his late partial summary judgment motion, this Court need not address the merits of this motion (see *Brill v City of New York*, 2 NY3d at 651).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that, within thirty days of entry, defendants shall serve upon plaintiff a copy of this decision and order, together with notice of entry.

This constitutes the Decision and Order of the Court.

Dated: 11/15/05

ENTER: *DL*
Doris Ling-Cohan, JSC

Check One: [] FINAL DISPOSITION [X] NON-FINAL DISPOSITION
Check if Appropriate: [] DO NOT POST [] REFERENCE

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