Green v City of New York
2014 NY Slip Op 33404(U)
December 16, 2014
Supreme Court, Bronx County
Docket Number: 307398/10
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ANDREA GREEN,

Plaintiff(s),

DECISION AND ORDER

Index No: 307398/10

- against -

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

Defendant(s).

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In this action for the negligent maintenance of the public roadway, defendant THE CITY OF NEW YORK (the City) moves for an order granting it summary judgment thereby dismissing the complaint. The City avers that because it, the City, had no prior written notice of the defect alleged, summary judgment in its favor is warranted. Plaintiff opposes the instant motion alleging that the City fails to establish the absence of prior written notice and thus fails to establish prima facie entitlement to summary judgment. Moreover, plaintiff avers that should the Court find that the City has established prima facie entitlement to summary judgment, plaintiff's evidence nevertheless establishes that the City caused and created the condition alleged, such evidence raising an issue of fact precluding summary judgment. Defendant THE NEW YORK CITY TRANSIT AUTHORITY (NYCTA) also moves for an order granting it summary judgment thereby dismissing the complaint on grounds that it had no duty to nor did it maintain the public

roadway where plaintiff allegedly fell. Plaintiff opposes NYCTA's motion averring that her cause of action against NYCTA is not merely that it failed to maintain the roadway, but that it also failed to provide her a safe, defect-free passage while boarding NYCTA's bus.

For the reasons that follow hereinafter, defendants' motions are granted.

The instant action is for personal injuries allegedly sustained by plaintiff on February 16, 2010 while traversing the public roadway. Plaintiff's notices of claim allege that as plaintiff traversed the roadway located on 3rd Avenue at its intersection with East 161st Street, Bronx NY, she tripped and fell on a dangerous condition located thereat. As to the City, plaintiff, within her notice of claim, alleges that it failed to maintain the roadway in a reasonably safe condition, such failure constituting negligence, such negligence causing plaintiff's accident and the injuries resulting therefrom. As to NYCTA, plaintiff, within her notice of claim, makes identical allegations, but also alleges that NYCTA also failed to provide "a reasonably safe passageway for those lawfully upon the public roadway."

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of

law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, a defendant seeking summary judgment must establish prima facie entitlement to such relief as a matter of law by affirmatively demonstrating, with evidence, the merits of the claim or defense, and not merely by pointing to gaps in plaintiff's proof (*Mondello v DiStefano*, 16 AD3d 637, 638 [2d Dept 2005]; *Peskin v New York City Transit Authority*, 304 AD2d 634, 634 [2d Dept 2003]). Once movant meets the initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence, generally also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman* at 562).

Pursuant to section 7-201(c)(2) of the New York City Administrative Code,

> [n]o civil action shall be maintained against the city for damage to property or injury to person or death sustained in consequence of any street, highway, bridge, wharf, culvert, sidewalk or crosswalk, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the

> existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgment from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

Accordingly, generally, a municipal defendant bears no liability under a defect falling within the ambit of section 7-201(c) "unless the injured party can demonstrate that a municipality failed or neglected to remedy a defect within a reasonable time after receipt of written notice" (*Poirier v City of Schenectady*, 85 NY2d 310, 313 [1995]). Even when there is evidence that the municipality had prior written notice of a defective condition, liability for the same is obviated upon evidence that the same was repaired prior to a plaintiff's accident (*Lopez v Gonzalez*, 44 AD3d 1012, 1013 [2d Dept. 2007] [Municipal defendant granted summary judgment because, *inter alia*, while it had prior written notice of the condition alleged, it had repaired it and no further written notice existed at least 15 days prior to plaintiff's accident]). An exception to the foregoing exists, however, where it is claimed that the municipal defendant affirmatively created the condition alleged to have caused plaintiff's accident, in which case, the absence of prior written notice is no barrier to liability (*Elstein v City of New York*, 209 AD2d 186, 186-187 [1st Dept 1994]; *Bisulco v City of*

New York, 186 AD2d 85, 85 [1st Dept 1992]). A plaintiff seeking to proceed on a theory that the municipality created the defect alleged, however, must establish that the defective condition was improperly installed so as to bring the defect out of the ambit of ordinary wear and tear (*Yarborough v City of New York*, 10 NY3d 726, 728 [2008]; *Oboler v City of New York*, 8 NY3d 888, 890 [2007]). Stated differently, the proponent of a claim that a municipal defendant created a dangerous condition must establish that work performed by the municipal defendant was negligently performed such that it "immediately result[ed] in the existence of [the] dangerous condition" alleged (*Yarborough* at 728 [internal quotation marks omitted]).

On a motion for summary judgment,

> [w]here the City establishes that it lacked prior written notice under the Pothole Law, the burden shifts to the plaintiff to demonstrate the applicability of one of two recognized exceptions to the rule—that the municipality affirmatively created the defect through an act of negligence or that a special use resulted in a special benefit to the locality

(*Yarborough* at 726).

With respect to whether certain documents establish prior written notice, it is well settled that Big Apple Maps can establish prior written notice upon the City (*Katz v City of New*

York, 87 NY2d 241, 243 [1995] ["Maps prepared by Big Apple Pothole and Sidewalk Protection Committee, Inc. and filed with the Department of Transportation serve as prior written notice of defective conditions depicted thereon."]. While it is certainly true that "[d]isputes as to whether the location and nature of the defect are sufficiently portrayed [on the map] so as to bring the condition to the municipality's attention involve factual questions appropriately resolved at trial" (*Sondervan v City of New York*, 84 AD3d 625, 625-626 [1st Dept 2011]), it is also true that where the symbol on the map has no corresponding symbol on the legend, the map does not provide notice as a matter of law (*D'Onofrio v City of New York*, 11 NY3d 581, 585 [2008] [Court set aside jury verdict where the symbol on the map did not correspond to any defect on the legend.]).

However, it is well settled that citizen complaints (Lopez at 1012) or complaints to the City's 311 system do not provide prior written notice of a sidewalk defect (*Kapilevich v City of New York*, 103 AD3d 548, 549 [1st Dept 2013]). Similarly, telephonic complaints, even if reduced to writing do not satisfy the statute either (*Dalton v City of Saratoga Springs*, 12 AD3d 899, 901 [3d Dept 2004]; *Cenname v Town of Smithtown*, 303 AD2d 351, 352 [2d Dept 2003]). This of course makes sense since § 7-201(2) requires "written notice of the defective, unsafe, dangerous or obstructed condition. . . to the commissioner of transportation or any person

or department authorized by the commissioner to receive such notice." Repair orders, even if reduced to writing also fail to establish prior written notice upon a municipality sufficient to satisfy § 7-201 (*Marshall v City of New York*, 52 AD3d 586, 587 [2d Dept 2008] ["Contrary to the plaintiff's contention, repair orders or reports, reflecting only that pothole repairs had been made to the subject area more than a year before the accident, were insufficient to constitute prior written notice of the defect that allegedly caused the plaintiff's injuries."]; *Khemraj v City of New York*, 37 AD3d 419, 420 [2d Dept 2007] ["Moreover, the repair order or 'FITS report' from 1999, which reflected only that a pothole repair had been made to the subject area approximately 1 1/2 years prior to the plaintiff's fall, was insufficient to constitute written notice to the City."]; *Lopez* at 1012 ["Contrary to the plaintiff's contention, neither the citizen complaints nor the prior written repair orders constituted written notice of those prior defects."])

On September 14, 2003, with the passage of § 7-210 of the New York City Administrative Code, maintenance and repair of public sidewalks and any liability for a failure to perform the same, was shifted, with certain exceptions, to owners whose property abutted the sidewalk (*Ortiz v City of New York*, 67 AD3d 21, 25 [1st Dept 2009], *revd on other grounds* 14 NY3d 779 [2009]; *Klotz v City of New York*, 884 AD3d 392, 393 [1st Dept 2004]); *Wu v Korea Shuttle*

Express Corporation, 23 AD3d 376, 377 [2d Dept 2005]).

Specifically, §7-210 states, in pertinent part, that

> [i]t shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition. . . [, that] the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. . . [, that][f]ailure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. . . [,and that] [t]his subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

As noted above, because of § 7-201, prior to that the passage of § 7-210, the duty to repair and maintain the public sidewalks in a reasonably safe condition rested with the municipality within which the sidewalks were located (*Ortiz* at 24; *Weiskopf v City of New York*, 5 AD3d 202, 203 [1st Dept 2004]; *Belmonte v Metropolitan Life Insurance Company*, 304 AD2d 471, 474 [1st Dept 2003]).

Accordingly, before § 7-210, an abutting landowner had no duty to maintain the public sidewalk and was not liable for an accident occurring thereon unless he/she created the dangerous condition alleged or derived a special use from the sidewalk (*Weiskopf* at 203; *Belmonte* at 474). Accordingly, whereas tort liability for an accident involving a defective condition on a public sidewalk was once premised only upon the abutting owner's affirmative acts in making the sidewalk more hazardous, i.e., causing or creating a dangerous condition (*Ortiz* at 24), with the enactment of § 7-210, it is now well settled that an owner of property abutting a public sidewalk is liable for a dangerous condition upon said sidewalk even in the absence of affirmative acts (*id.* at 25; *Martinez v. City of New York*, 20 A.D.3d 513, 515 [2d Dept 2005]). Despite the enactment of § 7-210, the City nevertheless remains responsible to maintain certain sidewalks such as those abutting "one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes" (New York City Administrative Code § 7-210[c]), and is liable for defects existing on the sidewalks abutting exempt properties or in cases where the City created the dangerous condition alleged, or enjoyed a special use of the area upon where the defect existed (*Yarborough* at 726). Additionally, the City remains liable to maintain the curbs abutting public sidewalks because § 7-210 only shifted the responsibility of sidewalk

maintenance to an abutting landowner, which is defined as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians" (New York City Administrative Code § 19-101(d); *see also Ascencio v New York City Hous. Auth.*, 77 AD3d 592, 593 [1st Dept 2010] [Defendant, abutting property owner granted summary judgment in an action arising from an accident on a defective portion of the sidewalk when the evidence established that the accident occurred on the curb.]; *Garris v City of New York*, 65 AD3d 953, 953 [1st Dept 2009]).

Thus, as is the case with any action sounding in premises liability, an owner of real property abutting a public sidewalk is now liable if it is proven that he or she created the dangerous condition, had prior actual or constructive notice of its existence (*Weinberg v 2345 Ocean Associates, LLC*, 108 AD3d 524, 525 [2d Dept 2013]; *Anastasio v Berry Complex, LLC*, 82 AD3d 808, 809 [2d Dept 2011]), or enjoyed a special use of the public sidewalk (Terilli v Peluso, 114 AD3d 523, 523 [1st Dept 2014]; *Rodriguez v City of Yonkers*, 106 AD3d 802, 803 [2d Dept 2013]). As in any case premised on the negligent maintenance of real property, it is well settled that a prerequisite for the imposition of liability for a dangerous condition within, or, on real property, is a defendant's occupancy, ownership, control or special use of the premises (*Balsam v Delma Engineering Corporation*, 139 AD2d 292, 296-297 [1st

Dept. 1998]; *Hilliard v Roc-Newark Assoc.*, 287 AD2d 691, 693 [2d Dept 2001]). Absent evidence of ownership, occupancy, control, or special use, liability cannot be imposed (*Balsam* at 297).

The City's Motion

The City's motion for summary judgment is hereby granted insofar as the City establishes that it had no prior written notice of the defect alleged to have caused plaintiff's accident at least 15 days prior to her fall and plaintiff fails to establish that the city created the defective condition alleged through a negligent repair.

Here, the City submits the transcript of plaintiff's 50-h hearing, where she testified - never giving any specifics about the exact location of her accident - that she tripped and fell while crossing the street. Specifically, plaintiff testified on February 16, 2010, she had just left work on Brook Avenue and intended to catch the #15 bus. As she traversed the roadway towards the bus stop, which was delineated by a pole, she tripped when her foot encountered a defect on the road way. When she fell, she was about 10 feet from the pole and could not see what caused her fall because there was snow on the ground, upon returning the scene, she saw that what caused her fall was a bump on the road.

The City also submits documents evincing the results of

multiple searches it conducted of its records for the area upon which plaintiff alleges to have fallen. Specifically, the City produced documents detailing the results of several searches it conducted of its Department of Transportation (DOT) records. All searches undertaken were a period of two years prior to plaintiff's alleged accident and the documents searched for were, *inter alia*, permits, permit applications, corrective action reports, inspection reports, cutforms, maintenance and repair records, gangsheets, and Big Apple Maps and legends for the roadway at or near the intersection of East 161st Street and Third Avenue. With the exception of a Big Apple Map, which was unearthed during almost all searches, only two searches yielded any other documents. With regard to the Big Apple Map, the accompanying legend indicates that the only portions of the roadway for which the map lists defects are crosswalks, and nothing on the map unearthed indicates any defects at any of the crosswalks at the intersection of Third Avenue and East 161st Street.

With respect to the searches that yielded records, the first was performed on September 26, 2012 and it was for the roadway located at the intersection of Third Avenue and East 161st Street, Bronx, NY. Specifically, and to the extent relevant, the search yielded four repair orders and four gangsheets. The documents, as well as the deposition testimony of Omar Codling (Codling), record searcher employed by DOT - whose deposition transcript the City

submits - evinces the following[1]. On April 21, 2009, a complaint was received about a pothole in the roadway in front of 3170 Third Avenue, between Brook Avenue and East 161st Street. According to the repair order and the related gangsheet, the same was repaired May 16, 2009. On September 17, 2009, a complaint was received about a pothole on the roadway on Third Avenue between 161st Street and 163rd Street. According to the repair order and the related gangsheet, the same was repaired the very same day. On January 7, 2010, a complaint was received about a pothole in the roadway between East 161st Street and St Ann's Avenue. According to the repair order and the related gangsheet, the same was repaired that same day. On January 8, 2010, a complaint was received about a pothole on the roadway in front of 3202 Third Avenue between 161st and 162nd Streets. According to the repair order and the related gangsheet, the same was repaired the very day.

The other search which yielded records was performed on July 23, 2014 and was again for the intersection of East 161st Street and Third Avenue, Bronx, NY. The search yielded three corrective action requests and records of six inspections. None of these documents are related to the defect alleged by plaintiff and instead relate to defects surrounding manhole covers, which in any

[1] To the extent that the searches yielded complaints made to 311, such complaints to the City's 311 system do not provide prior written notice of a sidewalk defect *(Kapilevich* at 549), and are, thus, not discussed

event were repaired at the latest in 2009.

Based on the foregoing, the City establishes prima facie entitlement to summary judgment by tendering evidence that it had no prior written notice of any defective condition - let alone the one alleged by plaintiff - at or around the location where plaintiff alleges to have fallen at least 15 days prior to plaintiff's accident. As noted above, the Big Apple Map fails to establish prior written notice since there are no potholes depicted therein within the only area said map could document the same, namely, the intersection. Moreover, while generally, repair orders, namely FITS reports do not provide a municipality with prior written notice of a defective condition (*Marshall* at 587 [2d Dept 2008] ["Contrary to the plaintiff's contention, repair orders or reports, reflecting only that pothole repairs had been made to the subject area more than a year before the accident, were insufficient to constitute prior written notice of the defect that allegedly caused the plaintiff's injuries."]; *Khemraj* at 420; *Lopez* at 1012), here the repair orders submited fail to establish prior written notice for the additional reason that the potholes described therein, as evinced by the repair orders themselves, were repaired well before plaintiff's accident and, thereafter, nothing evinces that the City was provided prior written notice of the pothole alleged to have caused her fall (*Lopez* at 1013 [Municipal defendant granted summary judgment because, *inter alia*, while it

had prior written notice of the condition alleged, it had repaired it and no further written notice existed at least 15 days prior to plaintiff's accident.]). Thus, the City establishes prima facie entitlement to summary judgment.

Nothing submitted by plaintiff raises an issue of fact sufficient to preclude summary judgment. Contrary to plaintiff's assertion, even if the repair orders unearthed by the City provide it with prior written notice of the defect alleged to have caused her injury, those same repair orders evince that any potholes about which the City received complaints were repaired long before her fall. Thereafter, and prior to her fall, the City received no other legally cognizable prior written notice of the defect alleged. To the extent that plaintiff tenders an affidavit from Stanley Fein (Fein), a Professional Engineer, averring that the City caused and created the condition which caused plaintiff's accident, such claim is meritless.

As noted above, it is true that plaintiff can proceed on a theory that the municipality created the defect alleged, if he establishes that the defective condition was improperly installed so as to bring the defect out of the ambit of ordinary wear and tear (*Yarborough* at 728; *Oboler* at 890), namely, that municipal defendant was negligent in the repair performed such that it "immediately result[ed] in the existence of [the] dangerous

condition" alleged (*Yarborough* at 728 [internal quotation marks omitted]). However, it is equally well settled that expert testimony must be based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming material facts not supported by record evidence (*Cassano v. Hagstrom*, 5 NY2d 643, 646 [1959]; *Gomez v New York City Hous. Auth.*, 217 AD2d 110, 117 [1995]; *Matter of Aetna Cas. & Sur. Co. v Barile*, 86 AD2d 362, 364-365 [1982]). Here, while Fein states that based on his review of the photographs taken after plaintiff's accident, the defective condition upon which she fell was caused by the City's improper prior repair of the pothole existing thereat, there is absolutely no evidence in this record detailing how the City repaired the potholes alleged. Thus, Fein's opinion, reached in the absence of such information is speculative and insufficient to establish that the City caused or created the condition alleged and that the defect alleged was, thus, not the result of ordinary wear and tear (*Matter of Chiurazzi*, 296 AD2d 406, 407 [2d Dept 2002] ["The testimony of the objectants' experts, who never met or treated the decedent, was speculative, and, thus, not entitled to any weight."]; *Quinn v Artcraft Construction, Inc.*, 203 AD2d 444, 445 [2d Dept 1994] [Court precluded expert opinion as speculative when he sought to opine that window which caused plaintiff's accident was improperly installed despite not having examined the same until 11 years after the accident]). Accordingly, the City's

motion is granted.

NYCTA's Motion

NYCTA's motion for summary judgment is granted insofar as it establishes that it was not responsible for the maintenance nor repair of the public roadway upon which plaintiff alleges to have fallen. NYCTA further establishes that it did nothing to compel plaintiff to traverse the defect alleged as she attempted to catch the public bus.

Here, NYCTA submits plaintiff's deposition transcript wherein she testified that her accident occurred on February 10, 2010 near the bus stop on East 161st Street and Third Avenue. Plaintiff testified that she had just exited her place of employment and proceeded to cross the street in the middle of the block - rather than the crosswalk - intending to catch the #15 bus across the street. As she neared the bus stop, and when she was only a few inches away, she felt her foot enter a hole under a large amount of snow, tripping and falling as a result. Plaintiff testified that as she approached the bus stop, the bus had not yet arrived. NYCTA also submits Sara Wyss' (Wyss) deposition transcript an employee with NYCTA, who testified that NYCTA neither maintains, owns, nor controls the public roadways. Wyss also testified that NYCTA does not make repairs nor does it inspect bus stops.

Based on the foregoing, since is well settled that premises liability can only be premised on a defendant's occupancy, ownership, control or special use of the premises (*Balsam* at 296-297; *Hilliard* at 693), here NYCTA establishes - with Wyss' testimony that having no duty to repair and having made no repairs to the subject roadway, it cannot be liable for the defect alleged.

Moreover, while it is true that "[a] common carrier is under a duty to provide a prospective passenger with a reasonably safe, direct entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance" (*Ausderan v City of New York*, 219 AD2d 562, 563 [1st Dept 1995] [internal quotation marks omitted]), the breach of that duty generally hinges on whether the carrier did anything to compel or even suggest that the passenger walk across a defective path or whether the passenger chose the dangerous path without the guidance or discretion of the carrier (*id.* at 563). This, of course stems from the well settled principle that a common carrier's duty with regard to a boarding passenger is the same owed to one alighting from its bus - namely, that "[a] common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area" (*Miller v Fernan*, 73 NY2d 844, 846 [1988]; *Smith v Sherwood*, 16 NY3d 130, 133 [2011]; *Fagan v Atlantic Coast Line R.R. Co.*, 220 NY 301, 306 [1917]; *Kasper v Metropolitan Transp. Authority Long Island Bus*, 90 AD3d 998, 999 [2d Dept 2011]). Any

duty owed, however, generally ends upon that passenger's exit from the common carrier's vehicle (*Wisoff v County of Westchester*, 296 AD2d 402, 402 [2d Dept 2002] ["duty to the infant plaintiff as a passenger terminated when the infant plaintiff alighted safely onto the sidewalk"]; *Sigmond v Liberty Lines Transit, Inc.*, 261 AD2d 385. 387 [2d Dept 1999]), and

> even when the operator of the vehicle is in violation of a traffic regulation, but a passenger makes an independent and voluntary choice of departing from a safe alighting point onto a hazardous road condition, caused by the improper placement of the vehicle, courts will not impose liability on the common carrier

(*Blye v Manhattan and Bronx Surface Transit Operating Authority*, 124 AD2d 106, 109 [1st Dept 1987]). The same is, thus, true with respect to a boarding passenger and there can be no liability for a passenger's independent choice to venture onto a defective condition where the common-carrier did nothing to compel that decision (*Ausderan* at 563).

Here, NYCTA's evidence establishes that it did nothing to compel plaintiff access the bus stop from the middle of the street, particularly because the bus had not yet arrived. This distinction is critical since an argument could be made and a different result reached if, for example, the bus had been stopped at the bus stop in a manner compelling plaintiff to traverse the defect alleged. Accordingly, since plaintiff's path to the bus stop was the result

of her independent action, such choice causing her to traverse the defect alleged, NYCTA establishes that it bears no liability for plaintiff's accident, under the theory that it breached the duty owed as a common carrier to provide plaintiff with a reasonably safe passageway for those lawfully upon the public roadway. NYCTA thus establishes prima facie entitlement to summary judgment.

Nothing submitted by plaintiff raises an issue of fact sufficient to preclude summary judgment. The affidavit submitted by plaintiff merely reiterates her deposition testimony and while therein plaintiff adds that the bus was approaching at the time of her accident, such fact is not tantamount to action by NYCTA compelling plaintiff to access the bus stop in the manner and from the direction chosen. NYCTA's motion is, therefore, granted. It is hereby

ORDERED that the complaint against defendants be dismissed, with prejudice. It is further

ORDERED that NYCTA and the City serve a copy of this Decision and Order with Notice of Entry upon plaintiff within thirty (30) days hereof.

Dated : December 16, 2014
Bronx, New York

Mitchell J. Danziger, ASCJ