

5443

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

-----X  
PATRICIA FORBES,

Index #: 101558/2006

Plaintiff,

ORDER WITH  
NOTICE OF  
ENTRY

-against-

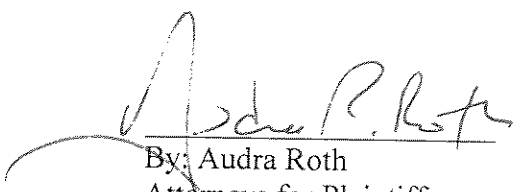
NEW YORK CITY TRANSIT AUTHORITY and  
METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.  
-----X

S I R S:

PLEASE TAKE NOTICE, that annexed is a true copy of an Order duly entered in the office of the Clerk of the within named Court on November 9, 2009.

Dated: New York, New York  
November 9, 2009



By: Audra Roth  
Attorneys for Plaintiff  
PATRICIA FORBES  
192 Lexington Avenue, Suite 802  
New York, New York 10016  
(516) 425-1020  
File #: 5443

NEW YORK  
COUNTY CLERK'S OFFICE

NOV 12 2009

NOT COMPARED  
WITH COPY FILED

TO: WALLACE D. GOSSETT, ESQ.  
Attorneys for Defendants  
130 Livingston Street  
Brooklyn, NY 11201  
(718) 694-3867  
File #: TA-05-06-11-03-001

NEW YORK  
COUNTY CLERK'S OFFICE

NOV 12 2009

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

PRESENT: HAROLD BEELER  
*Justice*

PART 21

Forbes

INDEX NO. 10/558/06

- v -

NYC Transit Authority

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

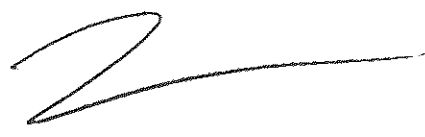
*is granted  
on default pursuant to order  
annexed.*

**FILED**

NOV 09 2009

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 11/04/09



**HAROLD BEELER** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

At IAS Part 21 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 4th of November, 2009.

PRESENT: HON. HAROLD B. BEELER,  
Justice

PATRICIA FORBES,  
Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and  
METROPOLITAN TRANSPORTATION  
AUTHORITY,  
Defendants.

INDEX NUMBER 101558/2006  
Motion Sequence 002  
DECISION & ORDER

**FILED**

NOV 09 2009

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff moves to strike defendants' answer to the complaint because of their failure to comply with discovery demands. There is no opposition.

Plaintiff was allegedly injured on June 11, 2005 when her wheelchair caught in the gap between the subway car and platform of the shuttle train at Times Square.

Plaintiff presents a detailed record of defendants' failure to comply with 16 demand notices, letters, court orders and stipulations regarding discovery reaching back to November 2006. On two occasions, August 21, 2008 and October 30, 2008, the Court levied financial sanctions on defendants because of their conduct. To date, defendants have not made these payments, a total of \$750.

"All parties and their counsel have an obligation to make good faith efforts to fulfill their discovery and disclosure obligations and to resolve all discovery and disclosure disputes, before seeking judicial intervention. Dilatory tactics, evasive conduct and/or a pattern of non-


compliance with discovery and disclosure obligations may give rise to an inference of wilful and contumacious conduct, and may result in severe adverse consequences and sanctions." *Santiago v City of New York*, 2007 NY Slip Op 50793U, 3 (Sup Ct Bronx County 2007); see also CPLR § 3126; *Kihl v Pfeffer*, 94 NY2d 118 (1999). Here, as in *Wilson v West Hempstead Generals Football Club, Inc.*, 286 AD2d 438 (2d Dept 2001), "the [parties'] willful and contumacious conduct can be inferred from their failure to comply with the numerous court orders directing disclosure or to offer a reasonable excuse for their lack of compliance."

Accordingly, plaintiff's motion is granted and defendants' answer to the complaint is stricken.

This constitutes the decision and order of the Court. Any other requested relief not expressly granted is denied.

DATE: November 4, 2009

ENTER:

  
HAROLD B. BEELER, J.S.C.  
HAROLD BEELER  
J.S.C.

**FILED**

NOV 09 2009

NEW YORK  
COUNTY CLERK'S OFFICE

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK


COUNTY OF NEW YORK ss.:

I, Diane Clemendor, being duly sworn, deposes and says:

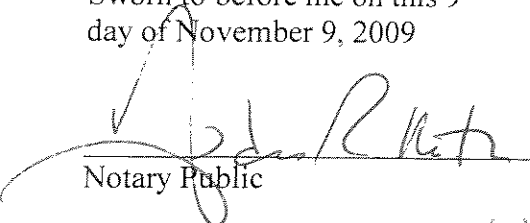
I am over 18 years of age, I am not a party to the action, and I reside in Kings County in the State of New York.

On November 9, 2009, I served a true copy of the annexed **ORDER WITH NOTICE OF ENTRY**, by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

WALLACE D. GOSSETT, ESQ.  
Attorneys for Defendants  
**NEW YORK CITY TRANSIT AUTHORITY**  
**and METROPOLITAN TRANSIT AUTHORITY**  
130 Livingston Street  
Brooklyn, New York 11201

  
**DIANE CLEMENDOR**

Sworn to before me on this 9<sup>th</sup>  
day of November 9, 2009

  
Notary Public

Audra R. Roth  
Notary Public, State of NY  
No. 02HA5025379  
Qualified in Nassau County  
Comm. Expires March 29, 2010

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

-----X  
PATRICIA FORBES,

Index No.: 101558/2006

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and  
METROPOLITAN TRANSIT AUTHORITY,

Defendants.  
-----X

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ORDER WITH NOTICE OF ENTRY

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The below signature attests to the following papers: Order with Notice of Entry and attached Order

By: 

Audra R. Roth

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ROTH & ROTH, LLP.  
Attorneys for Plaintiff  
192 Lexington Avenue, Suite 802  
New York, New York 10016  
(212) 496-1020