

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

ORIGINAL

PRESENT: ROGER N. ROSENGARTEN,
JUSTICE.

PART IAS 23

MARIA TORRES,

Plaintiff,

Index No. 10848/05

Motion Date: 6/28/11

-against-

Motion Seq. # 2

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

QUEENS COUNTY CLERK
NOV 22 11 22 P 3 25

The following papers numbered 1 to 11 read on this motion to dismiss an affirmative defense and cross-motion for summary judgment.

- Notice of Motion – Affirmation in Support – Exhibits.....1-3
- Notice of Cross-Motion – Aff'n in Support – Aff't in Support – Exhibits...4-7
- Affirmation in Opposition to Cross-Motion – Affidavit – Exhibits.....8-10
- Reply Affirmation.....11

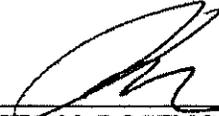
Upon the foregoing papers it is ordered that this motion is decided as follows:

This matter involves Plaintiff's trip and fall upon a four inch elevation between the Defendants' subway train and the platform at Defendants' Union Turnpike Station on May 24, 2004. Defendants claim the benefit of qualified immunity that absolves them of liability for accidents occurring due to gaps of six inches or less. Plaintiff, alleging that the "six inch rule" is not based upon reliable scientific data, moves to dismiss the qualified immunity affirmative defense. The Defendants claim that the "six inch rule" was based upon engineering and statistical studies conducted over several years and move for summary judgment in their favor.

In support of the cross-motion, Defendants offer the affidavit of a civil engineer in their employ which avers that, although the "six inch rule" has been in effect since 1987, its policy is based upon a study conducted in August of 2000 by Defendants' Maintenance of Way Department and Car Equipment Engineering Department, with the calculations being revised in 2001 and 2006. Affixed to the said affidavit is what appears to be data on existing gaps on various lines drafted by the Defendants' "engineering" departments. There has been much controversy and discussion regarding discovery of studies that led to the Defendants' six inch rule. The Court finds that the submissions in support of the six inch gap rule are inadequate to satisfactorily substantiate it as a qualified immunity defense. However, it is the opinion of the Court that upon the trial of the action, Defendants may present evidence regarding its policy and the reasons therefore as a defense to the action.

Accordingly, the motion is granted to the extent set forth above and the cross-motion is denied. The parties are directed to place this matter on the trial calendar forthwith.

Dated NOVEMBER 16, 2011


ROGER N. ROSENGARTEN, J.S.C.