

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - April 5, 2007

HOWARD MILLER, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2006-06968

DECISION & ORDER

Josephine Culmone, et al., respondents, v New York
City Transit Authority, appellant.

(Index No. 22465/04)

Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for appellant.

Kahn Gordon Timko & Rodriques, P.C., New York, N.Y. (Mitchell F. Senft of
counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Kings County (Hinds-Radix, J.), dated May 31, 2006, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is granted.

The plaintiff Josephine Culmone (hereinafter the plaintiff) was boarding a New York City bus operated by the defendant agency when the bus driver allegedly ordered the passenger ahead of her to get off the bus. As that passenger turned around to exit the bus, he knocked the plaintiff over, causing her to fall off the bus and into the street.

The plaintiff then commenced this action against the defendant, and her husband asserted a derivative claim. The defendant moved for summary judgment dismissing the complaint on the ground that the plaintiff's injuries were solely attributable to the actions of the other passenger, and were not the result of any negligence on the part of the bus driver. The plaintiff opposed the

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motion without tendering any additional evidence. The court denied the motion. We reverse.

Contrary to the plaintiffs' contention, the defendant established its prima facie entitlement to judgment as a matter of law by tendering evidence that the sole proximate cause of the plaintiff's injury was the intentional or negligent conduct of the passenger ahead of her, and negligence on the bus driver's part, if any, merely furnished an occasion for the injury-producing event, which was unforeseeable as a matter of law (*compare Marenghi v New York City Tr. Auth.*, 151 AD2d 272, *affd* 74 NY2d 822, *with Walton v Doyle*, 9 NY2d 783). In opposition, the plaintiff failed to raise any triable issue of fact regarding the defendant's negligence or the foreseeability of the other passenger's conduct. Accordingly, the motion for summary judgment dismissing the complaint should have been granted.

The plaintiffs' remaining contentions are without merit.

MILLER, J.P., ANGIOLILLO, CARNI and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court