

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

D36285
N/hu

_____AD3d_____

Submitted - September 20, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-11776

DECISION & ORDER

Yazmin Garcia, respondent, v Sunny Transportation
Services, et al., appellants.

(Index No. 18371/09)

Lewis, Brisbois, Bisgaard & Smith, LLP, New York, N.Y. (Nicholas Hurzeler and
Gregory S. Katz of counsel), for appellants.

Blank & Star, PLLC, Brooklyn, N.Y. (Helene Blank, Scott Star, and Matthew Sakkas
of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Kings County (Jacobson, J.), dated November 2, 2011, which granted
the plaintiff's motion for summary judgment on the issue of liability against the defendant Sunny
Transportation Services.

ORDERED that the appeal by the defendants M&C Transportation, LLC, and "John
Doe" is dismissed, as those defendants are not aggrieved by the order appealed from (*see* CPLR
5511); and it is further,

ORDERED that the order is reversed on the appeal by the defendant Sunny
Transportation Services, on the law, and the plaintiff's motion for summary judgment on the issue
of liability against that defendant is denied; and it is further,

ORDERED that one bill of costs is awarded to the defendant Sunny Transportation
Services.

October 24, 2012

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GARCIA v SUNNY TRANSPORTATION SERVICES

“To establish a prima facie case of negligence against a common carrier for injuries sustained by a passenger as a result of the movement of the vehicle, the plaintiff must establish that the movement consisted of a jerk or lurch that was ‘unusual and violent’” (*Golub v New York City Tr. Auth.*, 40 AD3d 581, 582, quoting *Urquhart v New York City Tr. Auth.*, 85 NY2d 828, 830; see *Burke v MTA Bus Co.*, 95 AD3d 813; *Gioulis v MTA Bus Co.*, 94 AD3d 811, 812; *Black v County of Dutchess*, 87 AD3d 1097, 1098). Here, in moving for summary judgment on the issue of liability against the defendant Sunny Transportation Services, the plaintiff merely alleged in her affidavit that the defendant driver began to drive away before she was seated, and she failed to establish, prima facie, that the movement of the vehicle was “unusual and violent” (*Urquhart v New York City Tr. Auth.*, 85 NY2d at 830; see *Guadalupe v New York City Tr. Auth.*, 91 AD3d 716; *McLeod v County of Westchester*, 38 AD3d 624, 625; *Jenkins v Westchester County*, 278 AD2d 370). Since the plaintiff failed to meet her initial burden as the movant, the plaintiff’s motion for summary judgment should have been denied, regardless of the sufficiency of the opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

ENG, P.J., SKELOS, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court