

Brown v New York City Tr. Auth.

2007 NY Slip Op 31799(U)

June 19, 2007

Supreme Court, New York County

Docket Number: 0107190/2003

Judge: Donna Marie Mills

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT : DONNA M. MILLS

PART 21

AMY BROWN

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

FILED
JUN 25 2007
COUNTY CLERK'S OFFICE
NEW YORK

INDEX No. 107190/03

MOTION DATE _____

MOTION SEQ. No. 001

MOTION CAL No. _____

The following papers, numbered 1 to 5 were read on this motion for Summary Judgment

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits : 2

Replying Affidavits 3, 4, 5

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion for summary judgment is decided as follows:

This is an action for personal injuries allegedly sustained by plaintiff on June 17, 2002 when she was alighting a subway car and the doors closed wedging her between the doors and dragging her along the subway platform. Plaintiff moves for partial summary judgment on liability pursuant to CPLR § 3212 under the doctrine of res ipsa loquitur. The Defendant New York City Transit Authority (hereinafter the "Authority") opposes the motion

APPLICABLE LAW & DISCUSSION

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). “But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trial calendar and thus deny to other litigants the right to have their claims promptly adjudicated” (Andre v Pomeroy, 35 NY2d 361 [1974]).

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor (CPLR 3212[b]), and must do so by tender of evidentiary proof in admissible form.

In the instant case, plaintiff submits and relies on the deposition testimony of two employees of the Authority, Kenneth Collins and Stanley Jetter, the motorman and conductor respectively of the train involved in the accident, and the testimony of the plaintiff herself. The undisputed facts are that the plaintiff entered the doorway of the train and the doors closed on her right leg which got stuck in the door. The train started to move with her leg still stuck in the door and the rest of her body outside on the train platform. She was dragged a distance and fortunately for her, before the car of the train entered the tunnel, she was able to pull herself free.

Plaintiff bases her motion largely on *res ipsa loquitur*, claiming that there are no questions of facts in dispute, and thus she is entitled to judgment on the issue of liability. The doctrine *res ipsa loquitur* represents an application of the ordinary rules pertaining to circumstantial evidence

[*3]

in negligence cases stemming from accidents having particular characteristics. When the doctrine is involved, an inference of negligence may be drawn solely from the happening of the accident upon the theory that “certain occurrences contain within themselves a sufficient bases for an inference of negligence” (Foltis, Inc. v City of New York, 287 NY 108, 116 [1941]). The rule simply recognizes what we know from our everyday experience: that some accidents by their very nature would ordinarily not happen without negligence (see, Ditinger v Isal Realty Corp., 290 NY 492 [1943]). Res ipsa loquitur does not create a presumption in favor of the plaintiff but merely permits the inference of negligence to be drawn from the circumstance of the occurrence (Richardson, Evidence §3-142, at 96 [Prince 11th ed]). The rule has the effect of creating a prima facie case of negligence sufficient for submission to the jury, and the jury may—but is not required to—draw the permissible inference (see, Foltis, Inc. v City of New York, supra, at pp 115-120).

Where the specific cause of an accident is unknown, a plaintiff seeking to rely on the doctrine of res ipsa loquitur must establish the following elements: (1) that the event was one that would not ordinarily occur in the absence of someone’s negligence; (2) that the event was caused by an agency or instrumentality within the exclusive control of the defendant; and (3) that the accident was not caused by the contributory negligence of the plaintiff (see Kambat v St. Francis Hosp., 89 NY 2d 489, 494 [1997]).

The Court in Morejon v Rais Constr. Co., 7 NY3d 203, 209 [2006]) reaffirmed the principle “that only in the rarest of res ipsa loquitur cases may a plaintiff win summary judgment or a directed verdict. That would happen only when the plaintiff’s circumstantial proof is so convincing and the defendant’s response so weak that the inference of defendant’s negligence is

inescapable.” This case is not one where there are no facts left for determination. This court concurs with the Authority, that questions of fact exists as to the plaintiff’s own culpability in the making of this accident. For, example, the plaintiff’s choice to place her foot between closing doors may have contributed to the accident, thus precluding a finding of res ipsa at this time.

Plaintiff is not, however, precluded from seeking the deposition of a Transit Authority witness whether, fact or expert, regarding the operation of the subject train doors.

Accordingly it is

ORDERED that the motion for summary judgment on liability is denied; and it is further

ORDERED that the plaintiff may deposit the appropriate Transit Authority witness regarding train door operation..

Dated: 6-19-07

J.S.C.
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

FILED
JUN 25 2007
COUNTY CLERK'S OFFICE
NEW YORK