

Famiglietti v New York City Tr. Auth.

2007 NY Slip Op 32550(U)

August 9, 2007

Supreme Court, New York County

Docket Number: 0116298/2005

Judge: Donna Marie Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 21

FAMIGLIETTI, PIA

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

INDEX No. 116298/05

MOTION DATE _____

MOTION SEQ. No. 001

MOTION CAL No. _____

The following papers, numbered 1 to 3 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

CROSS-MOTION: _____ YES NO

FILED
AUG 17 2007
NEW YORK
COUNTY CLERK'S OFFICE

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 as a result of an alleged sudden movement of the train on which she was a passenger on December 14, 2004, approximately between 4:30 and 5:00 p.m. as the northbound "W" train was traveling between the 42nd and 49th Street stations in Manhattan. The plaintiff alleges that the train on which she was a passenger engaged in a sudden and violent "jerking" which caused her to be thrown across the subway floor to the other side of the subway car. As such, the plaintiff alleges that the

New York City Transit Authority (hereinafter the “Authority”) was negligent in failing to avoid sudden, unusual and violent jerks, lurches or stops and thereby causing serious injuries to her. The Authority denies the allegations and now seek summary judgment dismissing the action.

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, the Authority contends that the plaintiff’s testimony at the statutory hearing and deposition, where she testified that the “train jerk threw [her] across, over the other side,” is insufficient to hold the Authority negligent. The Authority also rely on the train operator John Haskins’ deposition testimony in which he stated that he recalled speaking to the plaintiff on the accident date and she informed him that she had fallen while trying to stand up and lost her balance and fell. Train dispatcher Nancy Soto was also deposed and corroborated Mr. Haskins’ testimony that the plaintiff attributed her fall to losing her balance and not as a result of the operation of the train. The Authority also rely on Road Car Inspector Satyanand

Hemraj's deposition testimony where he testified that on the date of plaintiff's accident, he inspected the car on which the plaintiff was a passenger and found it to be in proper working order. Lastly the Authority also rely on two separate reports generated by their employees which contained no information to show that there was anything wrong with the subject train and that plaintiff failed to mention anything out of the ordinary occurred with the operation of the train on the subject date.

In opposition to the subject motion, counsel for the plaintiff relies on the testimony of the plaintiff and the severe nature of plaintiff's injury. Plaintiff testified in her deposition that after she arose from her seat to look at a map, the train jerked and she was thrown head first across the train and landed on her left side, sustaining a displaced comminuted fracture of her left femur. It is undisputed that the injury plaintiff sustained required her to undergo surgery and extensive rehabilitation for her fractured left hip. Additionally, plaintiff relies on Mr. Hemraj's report which contradict his testimony that he found nothing wrong with the subject train. His report clearly indicated that "shop attention [was] required" and that a train trouble control report was generated as a result of his report.

As such, contrary to the Authority's contentions, the plaintiff's testimony at her deposition and at the hearing pursuant to General Municipal Law § 50-h, together with the medical evidence of her injuries, raise a triable issue of fact as to the train operator's negligence, (see Urquhart v New York City Tr. Auth., 85 NY2d 828 [1995]); Harris v Manhattan & Bronx Surface Tr. Operating Auth., 138 AD2d 56 [1st Dept. 1988]).

Accordingly it is

ORDERED that the motion for summary judgment is denied. This constitutes the

decision and order of the court.

Dated: 8-9-07

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

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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