

Cuebas v New York City Tr. Auth.

2007 NY Slip Op 32693(U)

August 13, 2007

Supreme Court, New York County

Docket Number: 0110789/2004

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

VERONICA CUEBAS,

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY, et al.,
Defendants.

INDEX No. 110789/04

MOTION DATE _____

MOTION SEQ. NO. 004

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 28 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 sustained by the plaintiff on April 25, 2003 at approximately 8:30 p.m., when an unknown male passenger assaulted her on board a New York City Transit Authority (hereinafter "Transit") bus at the intersection of Allen and Canal Street in New York County.

Transit now seeks an order pursuant to CPLR § 3212 granting summary judgment dismissing the complaint on the grounds that the plaintiff has failed to state a cause of action and

that there are no triable issues of material fact. Plaintiff opposes the motion.

Applicable Law & Discussion

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (Vamattam v Thomas, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]).

Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (Andre v Pomeroy, 35 NY2d 361, 364 [1974]).

In the instant action it is undisputed that on the day in question, the plaintiff and the bus operator were engaged in a heated dialogue over the plaintiff's purported failure to remove her infant from a stroller. It should be noted that the bus operator and the plaintiff accuse each other of using profanity during this verbal exchange. As a result of the apparent failure of the plaintiff to take her infant child out of the stroller, which is against Transit rules, the bus operator refused to move the bus along its route and contacted the Bus Command Center. Shortly thereafter,

another passenger and plaintiff got into a fight. Plaintiff in her Bill of Particulars alleges that Transit was negligent in that it failed to provide adequate security and to protect its passengers from foreseen dangers.

Plaintiff's various allegations of negligence against the governmental defendants do not constitute grounds for imposition of liability. Weiner v Metropolitan Transp. Auth., 55 NY2d 175 [1982]) established a policy of broad immunity pursuant to which liability for the negligent performance of a governmental function may only be imposed if founded upon a special relationship between the plaintiff and the entity sought to be cast in damages (Cuffy v City of New York, 69 NY2d 255, 260 [1987]). As the instant governmental defendants cannot be said to have undertaken a special duty to protect plaintiff from the unforeseeable criminal act that caused her injuries, Transit may not be held accountable. Thus, the plaintiffs claims are defeated by the fact that the criminal acts of the unknown assailant was the sole proximate cause of plaintiff's death. As Justice Sullivan suggested, dissenting in Clinger v NYC Transit Authority, 201 AD2d 236, 242,-243 [1st Dept. 1994]) finding proximate cause in any of defendant's acts or omissions would be too "speculative," particularly where there is no "special relationship" between the defendant and the injured party (Weiner, supra).

This court does not find plaintiff's argument that the acts of the unknown assailant were foreseeable because the bus operator fomented the assault upon plaintiff by using profanity. Even accepting plaintiff's contention that the bus operator used profanity in directing the plaintiff to remove her infant from the stroller, that act in and of itself would not be sufficient to hold Transit culpable for the unforeseen criminal conduct of the unknown assailant.

Accordingly it is

ORDERED that the motion for summary judgment is granted and the complaint is hereby dismissed against defendants New York City Transit Authority and MABSTOA and the Clerk is directed to enter judgment in favor of said defendants.

Dated: 08/13/07



J.S.C.

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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