

Rodriguez v New York City Tr. Auth.

2010 NY Slip Op 30871(U)

April 12, 2010

Supreme Court, Richmond County

Docket Number: 104290/07

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.: 104290/07
Motion No.: 001**

YARIXA RODRIGUEZ,

Plaintiff

DECISION & ORDER

against

HON. JOSEPH J. MALTESE

**NEW YORK CITY TRANSIT AUTHORITY and
JOHN DOE**

Defendants

The following items were considered in the review of the following motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Defendant New York City Transit Authority's ("NYCTA") motion for an Order granting it summary judgment dismissing Plaintiff Yarixa Rodriguez's complaint pursuant to CPLR 3212 is denied.

FACTS

On July 14, 2007, Plaintiff allegedly fell onto the street while attempting to exit from the rear doors of an S44 bus operated by the NYCTA and driven by Irving Jiminez ("Jiminez"). The fall occurred while the bus was stopped at the bus stop located outside of the Staten Island Mall.

The rear door locking/unlocking mechanism works through an "interlock" that requires several actions to be taken before the doors can be opened: the bus must be at a standstill, the brake pedal must be held down, and the bus operator must press a lever. Once the locking mechanism is disengaged, the rider may choose to either open the doors manually by pushing the doors open, or

have the doors open automatically by pressing a yellow strip located on the door.

When the plaintiff sought to manually exit through the rear door, the locking mechanism initially failed to disengage, which prevented the plaintiff from pushing the doors open despite her best efforts. After the third try, the plaintiff's son alerted Jiminez that the back door had failed to open. In response, Jiminez then pressed harder on the bus's brakes, which allegedly allowed the locking mechanism to disengage. After the locking mechanism disengaged, the plaintiff again pushed hard in an attempt to open the doors. With the plaintiff unaware that the lock had finally disengaged, the force of her push caused the doors to fly open and she fell onto the pavement below. Plaintiff suffered a fractured ankle and numerous cuts and abrasions as a result.

DISCUSSION

Defendant moves for summary judgment dismissing the plaintiff's complaint since plaintiff has failed to produce any evidence that the doors of the bus malfunctioned, NYCTA had actual or constructive notice of any defect, or that Jiminez was negligent in his operation of the bus.

A motion for summary judgment must be denied if there are "facts sufficient to require a trial of any issue of fact" (CPLR §3212[b]). Granting summary judgment is only appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact. "Moreover, the parties competing contentions must be viewed in a light most favorable to the party opposing the motion"¹ Summary judgment should not be granted where there is any doubt as to the existence of a triable issue or where the existence of an issue is arguable.² On a motion for summary judgment, the function of the court is issue finding, and not issue determination.³ In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing

¹ *Marine Midland Bank, N.A., v. Dino, et al.*, 168 AD2d 610 (2d Dept 1990)

² *American Home Assurance Co., v. Amerford International Corp.*, 200 AD2d 472 (1st Dept 1994)

³ *Weiner v. Ga-Ro Die Cutting*, 104 AD2d 331 [2d Dept 1984]. *Aff'd* 65 NY2d 732 [1985]

the motion.⁴

Negligence, whether of the plaintiff or defendant, is usually a question of fact. It should be submitted to the jury if there is a valid line of reasoning and permissible inferences from which rational people can draw a conclusion of negligence on the basis of the evidence presented.⁵

In a negligence action against a common carrier, the standard of care required of common carriers is the same as the traditional, basic negligence standard of reasonable care under the circumstances.⁶ For injuries caused by defective equipment, the plaintiff must show the carrier had actual or constructive notice of the defect.⁷ A common carrier, like any other defendant, is not an insurer of the safety of its equipment and can be held liable for defects in the equipment only if it knew, or with reasonable care should have known, that the equipment was defective.⁸

Therefore, in order to demonstrate a prima facie entitlement to judgment as a matter of law dismissing Plaintiff's complaint, the defendant must allege facts that show they did not create the hazardous condition and had no actual or constructive knowledge of the condition's existence.⁹ To constitute constructive notice, "a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it."¹⁰ Where a plaintiff is unable to give a specific reason for the cause of an alleged accident, he or she

⁴ *Glennon v. Mayo*, 148 AD2d 580 [2d Dept 1989]

⁵ *Nallan v Helmsley-Spear, Inc.*, 50 N.Y.2d 507, 517 [1980]

⁶ *Boyd v. Manhattan & Bronx Surface Tr. Operating Auth.*, 9 N.Y.3d 89 [2007]

⁷ *Id.*

⁸ *Bethel v. New York City Transit Auth.*, 92 N.Y.2d 348 [1998]

⁹ *Boyd*, *supra*

¹⁰ *Gordon v American Museum of Natural History*, 67 N.Y.2d 836, 837 [1986]

may not recover based on pure speculation.¹¹

Defendant satisfies its initial burden of establishing that it did not create the hazardous condition. Indeed, defendant highlights the fact that the plaintiff has not presented any evidence to show that the doors malfunctioned in any way. Plaintiff did not point to any prior incidents to show that the rear door locking mechanism has a tendency to malfunction, or that the rear door locking mechanism on the bus in question actually malfunctioned. The plaintiff may not merely speculate that a malfunction existed and caused her injuries.¹² Jiminez followed protocol for making a routine stop at a bus stop by coming to a complete halt, engaging the brake, and pressing the lever to disengage the locks. The doors were alleged to have neither flown open automatically, nor been overly burdensome to open.

Defendant also has established that it did not have actual notice of the condition. Jiminez operated a different bus everyday, sometimes two different buses on the same day. Jiminez never witnessed any passenger having a problem opening the rear doors of a bus that he was operating, let alone the bus he was operating the day of the accident.¹³ If there was a recurring problem with the locks on the particular bus in question, neither the defendant nor Jiminez were aware of it. There is also no indication of the amount of time the alleged condition existed, which precludes a finding that defendant had constructive notice of the alleged condition.¹⁴

Once the moving party has made a showing of sufficient evidence, the burden shifts to the party opposing summary judgment to put forth evidence in admissible form to establish a triable

¹¹ *Visconti v. 110 Huntington Assocs., L.P.*, 272 A.D.2d 320, 321 [2d Dept 2000]

¹² *Visconti*, supra

¹³ Exhibit G, p. 47, Defendant's Notice of Motion

¹⁴ *Moss*, supra

issue of fact.¹⁵

Plaintiff has submitted sufficient evidence to establish that a triable issue of material fact exists. Plaintiff raised a triable issue of fact as to whether the interlocking system was functioning properly. Jiminez reported that, despite engaging the brake and pressing the lever, the rear doors sometimes would not open.¹⁶ If there was a history of rear doors not opening properly, a reasonable jury may find that the defendant was negligent in failing to routinely test the interlocking system to ensure it was operating correctly prior to beginning the bus routes for the day. Plaintiff also asserts that, even if the rear door locking mechanism was functioning properly, Jiminez was negligent in his disengagement of the locking mechanism. A reasonable jury may find that, given his extensive experience in operating a bus, Jiminez failed to use reasonable care by applying the brake with insufficient force to properly disengage the interlock system. Therefore, since triable issues of material fact exist, the defendant's motion for summary judgment must be denied.

Accordingly, it is hereby:

ORDERED, that Defendant NYCTA's motion for summary judgment seeking to dismiss Plaintiff Yarixa Rodriguez's complaint is denied; and it is further

ORDERED, that the parties return to DCM Part 3 on Monday, May 17, 2010 at 9:30a.m. for a pre-trial conference.

ENTER,

DATED: April 12, 2010

Joseph J. Maltese
Justice of the Supreme Court

¹⁵ *Zuckerman v. City of New York*, 49 NY2d 557 [1980]

¹⁶ Exhibit G, pp. 47-49, Defendant's Notice of Motion