SCAN

SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:
HON. ANTHONY L. PARGA
JUSTICE

----------X PART 8

LATOYA McKESSON,

Plaintiff(s),

-against-

MTA/LONG ISLAND BUS,

Defendant(s).

----------X

INDEX NO.: 12233/09
XXX
MOTION DATE: 08/18/11
SEQUENCE NO. 001

Notice of Motion, Affs. & Exs.....1
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Upon the foregoing papers, defendant's motion for summary judgment, pursuant to CPLR §3212, is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is a personal injury action wherein the plaintiff alleges that she was injured as she exited an MTA Long Island Bus in the late evening of June 24, 2008. Defendant moves for summary judgment arguing that the MTA/Long Island Bus cannot be found liable for plaintiff's accident or injuries.

Defendant argues that there are two versions of the accident, neither of which inculpates the defendant as the liable party. The first version, supported by plaintiff's pleadings and deposition testimony, is that plaintiff's injuries were caused when she was pushed by two men who were boarding the bus at the same time that the plaintiff was exiting the bus, as plaintiff was about to reach the last step of the bus. Plaintiff testified at her deposition that on the night of the accident, the bus "wasn't packed" and that she signaled the driver that she wished to exit the bus on the corner of Merrick Road and Park Avenue. She remained in her seat as the bus reached the designated stop. After the bus pulled up to the curb and the doors to the front entrance opened, she walked up to the front of the bus to exit through the front door. There were three steps to

exit/enter the bus, and plaintiff stepped with both feet down onto the second step. She testified that she was on that step alone and that no one was entering the bus at that time. Plaintiff testified that she then lifted her right foot with the intention of bringing it to the bottom step, but two men suddenly entered and, in pushing their way onto the bus, pushed plaintiff's left side, causing her to fall off of the bus onto the sidewalk. Plaintiff testified that she did not strike any portion of the inside of the bus as she fell to the sidewalk. Plaintiff admitted during her deposition that the two men "were the cause of me falling."

The second version of the happening of the accident is supported by the testimony of a non-party eyewitness, Rachel Barrow. Ms. Barrow testified that she observed the plaintiff's incident occur at the bus stop where plaintiff was exiting the bus and where Ms. Barrow was waiting to enter the bus. Ms. Barrow testified that the bus pulled all the way to the curb at the bus stop and that there was only one other person waiting there. Ms. Barrows was standing "directly in front of the doors that open," but a little towards the right side. She watched the plaintiff step down onto the second step and then pause. Ms. Barrows did not see anyone attempt to enter the bus during that time. She saw the plaintiff's left foot come off the second step and watched as plaintiff jumped over the last step onto the ground outside the bus. According to Ms. Barrow, when the plaintiff reached the ground, she landed on her feet and then grabbed her ankle and sat down on the ground. Ms. Barrows testified that plaintiff appeared to have jumped "on purpose." Ms. Barrows did not see anyone push the plaintiff at anytime.

In further support of its motion, defendant submits the deposition testimony of the bus driver, Thomas Polydore, who testified that he brought the bus to a complete stop at the bus stop located on Park Avenue and Merrick Road in Rockville Centre for the purpose of letting passengers on and off of the bus. He did not see any incident occur, but a passenger told him that a woman fell. He walked out of the bus and observed the plaintiff standing. He then asked if the woman was alright and called his dispatch.

According to all of the testimony in this action, defendant argues that regardless of which version of the accident is accepted as true, MTA/Long Island Bus cannot be found liable for the plaintiff's accident or injuries. Defendant contends that the plaintiff's injuries were caused by third-party assailants or the plaintiff herself, but in no event were plaintiff's injuries caused by the defendant MTA/Long Island Bus. Defendant further argues that plaintiff has not produced any evidence that any act or omission by the defendant was a proximate cause of the plaintiff's

injuries. As such, defendant argues that it is entitled to summary judgment.

In opposition, plaintiff fails to submit any evidence sufficient to demonstrate a triable issue of fact regarding the defendant's liability. Plaintiff argues that the bus driver stopped fifteen feet shy of the bus stop and that the bus driver failed to follow proper procedure by failing to instruct the passengers who were boarding the bus to wait until the plaintiff or other disembarking passengers got off first. Plaintiff argues that the defendant's employee manual states that the bus driver is to "see that customers who exit from the front are off of the bus before allowing other customers to board." Plaintiff further contends that the door and stairs were too narrow and that the two different versions of the happening of this incident are sufficient to warrant a denial of summary judgment.

Plaintiff has failed to submit any evidence that the defendant bears liability for plaintiff's accident or alleged injuries. There is no evidence that the bus driver had any notice of a dangerous condition or any notice that two men were about to enter the bus. Plaintiff, herself, did not even see the two men until she was on the second step during her exit. In addition, there is no evidence, expert evidence or otherwise, to establish that the stairway leading out of the bus was "too narrow." Additionally, in a negligence action, the defendant's internal rules or practices, which set forth a standard of care higher than the common law standards of reasonable care are not admissible. (*Gilson v. Metropolitan Opera*, 5 N.Y.3d 574, 841 N.E.2d 747 (2005); *Branham v. Loews*, 31 A.D.3d 319, 819 N.Y.S.2d 250 (1st Dept. 2006) *aff'd*, 8 N.Y.3d 931 (2007); *Brown v Metro. Transit Authority*, 281 A.D.2d 159, 721 N.Y.S.2d 56 (1st Dept. 2001)). Lastly, whether or not the bus stopped fifteen feet shy of the bus stop does not impart liability onto the defendant as same was not a proximate cause of the plaintiff's accident. (*See, Robins v. Metropolitan Suburban Bus Authority*, 58 A.D.3d 711, 872 N.Y.S.2d 164 (2d Dept. 2009)).

The proponent of a summary judgement motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)). Once the movant has demonstrated a prima facie showing of entitlement to judgement, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of a fact which require a trial of the action. (*Zuckerman v. City of New York,* 49 N.Y.2d 557 (1980)). Contrary to plaintiff's contentions, the defendant has made a prima facie showing of entitlement to summary judgment by tendering

evidence that the sole proximate cause of the plaintiff's injury was the intentional or negligent conduct of the two men entering the bus, or the plaintiff's own negligence, and that negligence of the driver, if any, merely furnished an occasion for the injury-producing event, which was unforeseeable as a matter of law. (*Culmone v. New York City Transit Authority*, 40 A.D.3d 676, 835 N.Y.S.2d 689(2d Dept. 2007). It has also been held that "it cannot be said that the use of the front door for alighting, as well as boarding, in and of itself constitutes negligence." (*Lifshitz v. Fifth Avenue Coach Lines*, 28 A.D.2d 266, 284 N.Y.S.2d 470 (1st Dept. 1967)). While there can be more than one proximate cause of an occurrence, there is no evidence that any action or inaction by the defendant or the bus driver was a proximate cause of the accident or alleged injuries herein. Liability may not be imposed upon a party who merely furnished the condition or occasion for the occurrence of the event, but was not one of its causes. (*See generally, Sheehan v. City of New York*, 40 N.Y2d 496, 387 N.Y.S.2d 92 (1976); *Wechter v. Kelner*, 40 A.D.3d 747, 835 N.Y.S.2d 653 (2d Dept. 2007); *Siegel v. Boedigheimer*, 294 A.D.2d 560, 562, 743 N.Y.S.2d 137, 139 (2d Dep't 2002); *Dauber v. Stone*, 76 A.D.3d 699, 907 N.Y.S.2d 291 (2d Dept. 2010); *Gerrity v. Muthana*, 7 N.Y.3d 834, 824 N.Y.S.2d 206 (2006)).

To carry the burden of proving a prima facie case, the plaintiff must generally show that a defendant's negligence was a substantial cause of the events which produced the injury. (*Rice v. Fuller*, 267 A.D.2d 292, 700 N.Y.S.2d 722 (2d Dept. 1999)). Plaintiff is unable to do so here, and there has been no evidence presented to raise a triable issue of fact sufficient to defeat defendant's prima facie showing of entitlement to summary judgment on liability grounds.

Accordingly, defendant's motion for summary judgment is granted.

Dated: October 13, 2011

Anthony L. Parga, J.S.C.

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