

Garrett v New York City Transit Auth.

2013 NY Slip Op 32778(U)

October 30, 2013

Sup Ct, New York County

Docket Number: 400746/11

Judge: Michael D. Stallman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

ESTELLE GARRETT,

Plaintiff,

- v -

INDEX NO. 400746/11

MOTION DATE 9/17/13

MOTION SEQ. NO. 001

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

FILED

NOV 04 2013

The following papers, numbered 1 to 6 were read on this motion for summary judgment

Notice of Motion— Affirmation in Support— Exhibits A-F _____ | No(s). 1-2

Affirmation in Opposition — Affidavit of Service _____ | No(s). 3-4

Reply Affirmation — Affidavit of Service _____ | No(s). 5-6

Upon the foregoing papers, it is ordered that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

In this action, plaintiff alleges that, on August 4, 2009, between 7:30 a.m. and 8 a.m., she fell on an object while walking down the aisle of an Access-A-Ride vehicle, scheduled to travel from Green Acres Mall to Manhattan. According to the bill of particulars dated September 27, 2010, plaintiff's alleged incident was caused by negligence in, among other things, allowing a piece of black rubber to remain on the floor of the vehicle. (Furshpan Affirm. Ex C, ¶ 6.) At her deposition, on July 13, 2011, plaintiff testified,

"Something was under my seat and I slipped. And I didn't make it to my seat, I fell in the aisle.

Q. Did you ever make it to your seat?

A. No, I didn't. I was laying in the aisle.

Q. Did that object you felt under your foot as you testified earlier; did you trip on that object, did you slip on it, did something else happen?

Q. I said something was under my foot, but I didn't see what it was. I still

(Continued...)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

didn't see what it was.

* * *

Q. You never saw that object?

A. I never saw.

Q. Not even after your incident?

A. I was in pain, I didn't see nothing.

Q. Can you describe to me what it felt like underneath your foot?

A. Something under my feet that wasn't supposed to be under my feet.

Q. But can you describe for me what it felt like?

A. I can't remember.

Q. Can you describe the size that it felt under your –

A. It was unpleasant under my feet.

Q. What I am asking you is, when you stepped on it, did this object –

A. Move or something?

Q. Listen to my question. When you stepped on this object, did you feel the size of it; was it smaller than your foot, was it bigger than your foot, was it something else?

A. It was bigger than my foot.

Q. Did it feel sticky, did it feel slippery?

A. I couldn't feel that.

Q. Did you notice if the floor of the bus was wet?

A. No, I didn't notice anything. I couldn't move.”

(Furshpan Affirm. Ex D [Garrett EBT], at 30-33.)

Defendant moves for summary judgment on the grounds that plaintiff cannot identify the object which caused her to fall and that defendant did not have actual or constructive notice because of plaintiff's inability to identify the alleged defect. In support of its motion, defendant submits the deposition testimony of Aurelio Rodriguez, the operator of the vehicle on the date of the alleged incident. (Furshpan Affirm. Ex E [Rodriguez EBT].) Defendant also submits the Vehicle Inspection Report from the date of the alleged incident. (Furshpan Affirm. Ex F.)

At his deposition, Rodriguez testified,

“[A]fter the quality control gives me a piece of paper, I have to go through the exterior [of the vehicle] and check all exterior damages. Then I have to go and check the interior. And in interior I have to check that all the seat belts work properly. Then I have to go to the back to check the lift and make sure that the lift goes up and down. Then I have to check the interior and

(Continued...)

Garrett v New York City Tr. Auth., Index No. 400746/11

make sure that everything is clean inside, that the interior has been mopped. Then I go to the front and I make sure that the wipers. . .that the wipers work. And I also have to check the lights, that the lights work properly. And then I fill this paper up, and I give it back to quality control.

Q. Is the paper that you say you have to fill up, is that some kind of checklist?

A. To make sure that everything is correct. Because if that's not correct, the vehicle doesn't leave.

* * *

Q. As you sit here today, do you recall any comments you made on the inspection sheet [on the date of the accident]?

A. No, because everything was okay.

* * *

Q. Do you recall whether Estelle Garrett was one of the names on your manifest?

A. That was the first pickup I had that day.

* * *

Q. Did something happen before [Estelle Garrett] took that seat?

A. Before she sat?

Q. Yes

A. What happened is that when the home attendant was trying to help her, she missed the seat and she fell.

* * *

Q. Who assisted her off the floor?

A. I did help her.

Q. Where did you put her?

A. She sat down.

Q. Did she sit in the seat she was closest to?

A. She sat on the same seat.

Q. Did you observe the floor of the bus after you picked her up?

A. Of course I did.

Q. What, if anything, did you observe?

A. The floor was like this clean, there was no garbage.

Q. You did not observe anything on the floor where the lady fell?

A. No.

Q. Did you pick up anything off the floor.

A. No, I didn't pick up anything because the floor was clean.

Q. Did anyone subsequently point out to you something on the floor that

(Continued...)

contributed to the accident?

A. No.

* * *

Q. Did anyone request that you continue driving the van?

A. Yes. I called the dispatcher, and the dispatcher told me that I have to ask the passenger to sign the manifest. This lady said that she wouldn't sign it, but she said she wanted to go because her appointment was very important. The appointment she was having on 33 West 42nd Street.

Q. So what was it that your dispatcher told you she had to sign?

A. That she had to sign the manifest saying that she was okay. Because I offered to call for help to 911 and she said that she didn't need to because she was okay.

Q. Did she sign the manifest?

A. No.

* * *

Q. Where did you leave the two ladies off?

A. Well, after that, we were in Ozone park. I asked the lady to sign the manifest again because she had finished drinking her cup of coffee. But she said that she won't because her home attendant had called her lawyer and the lawyer had directed her not to sign anything. So I pulled over and called the road supervisor.

* * *

Q. Did anyone call the police?

A. I called the dispatcher and she said that she needed an ambulance. So I called 911, I called for the ambulance. And the dispatcher also called for help.

Q. Who told you they needed an ambulance?

A. The home attendant is the one who said the passenger [Estelle Garrett] had to leave for the hospital."

(Rodriguez EBT at 19-20, 23, 25, 38, 40-44.)

Defendant argues summary judgment should be granted in its favor because plaintiff cannot identify or describe the object which caused her to fall. Defendant further argues that, even if a piece of black rubber existed on the floor at the time of plaintiff's fall, it would be insufficient to establish that was the cause of her fall, as it would be merely speculative. Defendant also contends that defendant cannot be charged with actual or constructive notice of the alleged defect because plaintiff cannot identify what caused her to fall, and because Rodriguez claimed to have inspected the vehicle before plaintiff boarded and after the alleged incident and did not observe any objects on the floor of the vehicle.

(Continued...)

“Although a plaintiff bears no burden to identify precisely what caused [her] . . . fall, mere speculation about causation is inadequate to sustain the cause of action.” (*Acunia v New York City Dept. of Educ.*, 68 AD3d 631, 632 [1st Dept 2009].) Based on plaintiff’s EBT testimony, defendant has established a prima facie case for summary judgment dismissing the complaint as a matter of law. Plaintiff speculates that she fell over an object, but plaintiff does not know what caused her to fall. Plaintiff testified that she “never saw” what caused her to fall. (Garrett EBT at 32.) During her deposition, plaintiff never mentioned that a piece of black rubber caused her to fall, as alleged in the bill of particulars served several months before her deposition. Thus, plaintiff offers no basis, other than speculation, on the cause of her fall. Because the allegations of negligence and causation are based entirely on speculation, and may not be reasonably inferred, defendant’s motion for summary judgment must be granted. (*Rivera v Adinolfi*, 249 AD2d 55, 57 [1st Dept 1998].)

Even if arguably, plaintiff’s vague allegations were to raise a triable issue of fact that she stepped on an object and fell, defendant has established it had no actual or constructive notice of the alleged defect. To meet its initial burden on the issue of lack of constructive notice, defendant “must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell.” (*Granillo v Toys "R" US, Inc.*, 72 AD3d 1024 [2d Dept 2010][citations omitted]; *Moser v BP/CG Ctr. I, LLC*, 56 AD3d 323, 324 [1st Dept 2008]). Rodriguez testified that he inspected the vehicle before he began operating it and observed that the floor was clean. (Rodriguez EBT at 23.) In light of the fact that defendant has shown the vehicle was inspected before plaintiff, the first passenger on that day, boarded the vehicle, defendant has demonstrated that it lacked constructive notice of the alleged defect. Plaintiff failed to raise a triable issue of fact regarding notice, therefore defendant’s motion for summary judgment is granted.

FILED HON. MICHAEL D. STALLMAN

Dated: 10/30/13
New York, New York

NOV 04 2013



J.S.C.

COUNTY CLERK'S OFFICE
NEW YORK

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check if appropriate:..... MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. Check if appropriate:..... SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE