

Rey v City of New York
2014 NY Slip Op 32366(U)
September 5, 2014
Supreme Court, New York County
Docket Number: 151918/12
Judge: Michael D. Stallman
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

**PRESENT: Hon. MICHAEL D. STALLMAN
*Justice***

PART 21

DORIS REY,

INDEX NO. 151918/12

Plaintiff,

MOTION DATE 7/15/14

- v -

MOTION SEQ. NO. 001

**THE CITY OF NEW YORK and METROPOLITAN
TRANSIT AUTHORITY REGIONAL BUS OPERATION,**

Defendants.

The following papers, numbered 15 to 16, 18-28, 33, 35, were read on this motion for summary judgment

Notice of Motion; Affirmation in Support; Exhibits A; B; C; D; E; F; G; H; I; J; K **| No(s). 15; 16; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28**

Affirmation in Opposition **| No(s). 33**

Reply Affirmation **| No(s). 35**

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

Upon the foregoing papers, it is ordered that the motion of defendant MTA BUS COMPANY (MTA Bus) (incorrectly sued herein as "Metropolitan Transit Regional Bus Operation") for summary judgment is granted and the complaint and any cross claims are dismissed as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that this action is respectfully referred to the Trial Support Office for reassignment to a City part.

Plaintiff alleges that, on October 11, 2011, she disembarked a BX8 express bus on East 23rd Street between Madison Avenue and Park Avenue in Manhattan and after disembarking she walked

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Rey v City of New York, Index No. 151918/12

approximately 10 feet or 12 steps before tripping over an unseen hump in the street. Plaintiff testified,

“[The bus operator] was in between – she stopped in between two buses that was by the bus stop.

Q: When you got to the opening between the two buses, what did you do?

A: “As I walked, I tripped, I fell. That is when I fell, going to the sidewalk. I fell in between two buses.

Q: You said that there were two other people that exited the bus before you. Is that right?

A: Yes

Q: Do you know which direction they headed after they first stepped off the bus? Did they make a right, left or something else?

A: They went left.

Q: And you had gone right; is that correct?

A: Yes

Q: Was there any reason why you didn't go left following them?

A: That was shorter.

Q What was shorter?

A: The way I went, it was closer for me to get to the sidewalk.”

(Samei Affirm. Ex. H [Rey EBT], at 28, 38-39.)

Defendant MTA Bus Company moves for summary judgment on the grounds that there are no issues of law and / or fact upon which defendant may be found liable as the bus operator provided plaintiff with a safe place to alight and plaintiff has not raised any material questions of fact and plaintiff's notice of claim was defective in that it provided the wrong location of the alleged incident.

Plaintiff opposes the motion arguing that the bus operator did not provide plaintiff a safe place to alight and there is a question of fact regarding where the bus operator discharged plaintiff because

(Continued . . .)

the bus operator testified that she did not have an occasion prior to or on the day of the alleged incident where she could not find a lane to pull the bus over to the curb. (Same! Affirm. Ex. J [Morales EBT], at 33.) Plaintiff does not address the issue of the wrong location of the alleged incident on the notice of claim.

The standards for summary judgment are well-settled.

“On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact, and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action. The moving party's [f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers.”

(*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal citations and quotation marks omitted].)

“The law is well established that a common carrier's duty of care to an alighting passenger is to stop at a place where the passenger can alight safely and towards that end ‘to exercise reasonable and commensurate care in view of the dangers to be apprehended.’” (*Blye v Manhattan and Bronx Surface Tr. Operating Auth.*, 124 AD2d 106, 109 [1st Dept 1987] [internal citations omitted].) “Only when the placement of the bus dictates that the passenger navigate a treacherous path should the public carrier be held liable for any injuries proximately caused by that hazardous condition.” (*Id.* at 111.)

Defendant MTA Bus has met its prima facie burden for judgment as a matter of law. Plaintiff testified that after exiting the bus onto the sidewalk she took about 12 steps or walked about 10 feet before tripping over a hump in the street, which she did not observe prior to
(Continued . . .)

tripping. (See *Samel Affirm. Ex. A* at 10, *Rey EBT* at 40.) “Once a safe alighting point is provided, the bus operator’s duty is completed. Further, even when the operator of the vehicle is in violation of a traffic regulation, but a passenger makes an independent and voluntary choice of departing from a safe alighting point onto a hazardous road condition, caused by the improper placement of the vehicle, courts will not impose liability on the common carrier.” (*Blye*, 124 AD2d at 109; See also *Diedrick v City of New York*, 162 AD2d 496 [2d Dept 1990] [affirming dismissal of common carrier where passenger took several steps after exiting bus before she tripped on alleged defect]; *Dwyer v City of New York*, 18 AD2d 902 [1st Dept 1963] [affirming dismissal where passenger took 10 or 12 steps after exiting bus before slipping on ice].) Plaintiff also testified that two passengers exited the bus before her and went left, while she chose to go right. (See *Rey EBT* at 39.) “[W]hen it is a passenger’s individual choice which directs where he or she will walk, then common sense, logic and public policy simply do not support extending a duty of care to the public carrier to insure that once the passenger has safely departed, the city’s streets or sidewalks will be absolutely free from defect.” (*Blye*, 124 AD2d at 111.)

Plaintiff has failed to show that there is a genuine issue of material fact that would preclude summary judgment in favor of defendant MTA Bus. Plaintiff argues that the bus operator did not provide plaintiff with a safe place to alight from the bus and that there is a question of fact as to where the bus operator discharged plaintiff. However, MTA Bus does not dispute where the bus operator discharged plaintiff or that the bus operator discharged plaintiff 12 steps or 10 feet away from the alleged defect. Also, plaintiff testified that two passengers disembarked the bus before her and went left, yet she went right as she believed that was shorter. (See *Rey EBT* at 39.) The fact that plaintiff took 12 steps before tripping and that other passengers safely disembarked the bus before plaintiff “demonstrated that □ plaintiff was provided with a safe place to alight and that a safe path away from the bus existed.” (*Otonoga v City of New York*, 234 AD2d 592, 593 [2d Dept 1996].) Furthermore, “[e]ven when the bus has come to a stop within steps of a hazardous □ condition, as long as the passenger has safely alighted, the duty of care owed that passenger has been fulfilled, and liability will not

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Rey v City of New York, Index No. 151918/12

extend to the passenger's act of stepping into the structurally defective or perilous spot." (Blie, 124 AD2d at 110.) Here, plaintiff was able to take 12 steps away from the bus before she allegedly tripped and other passengers had exited the bus safely before plaintiff. Therefore, plaintiff has not raised an issue of fact sufficient to preclude summary judgment.

The Court need not address defendant's remaining contention.

HON. MICHAEL D. STALLMAN

Dated: 9/5/14
New York, New York

 J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED
- NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE