

Sackeyfio v New York City Tr. Auth.
2015 NY Slip Op 31202(U)
July 9, 2015
Supreme Court, New York County
Docket Number:
Judge: Michael D. Stallman
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21**

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MIRANDA SACKEFIO,

Plaintiff,

- against -

Index No. 158128/12

NEW YORK CITY TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY and "JOHN DOE",

Decision and Order

Defendants.

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HON. MICHAEL D. STALLMAN, J.:

In this personal injury action, defendants New York City Transit Authority (NYCTA), Manhattan and Bronx Surface Transit Operating Authority (MABSTOA), and "John Doe" (Torrance Cameron) move for summary judgment. Plaintiff Miranda Sackeyfio opposes the motion.

BACKGROUND

In this action, plaintiff alleges that, on March 2, 2012, she was injured on a bus when the bus stopped short at West 110th Street between Broadway and Amsterdam Avenue in Manhattan. During her deposition, plaintiff testified,

"Then he applied his brakes when he was almost at Amsterdam
and that's when I fell. I didn't get a chance to sit.

Q: So were you facing the back of the bus after you put your fare in?

A: Yes.

Q: Okay. Do you know how much distance the bus traveled before it made a stop one block, half a block, three blocks?

A: About half a block. He didn't get to the next block.

Q: Do you know why the bus made a sudden stop?

A: I didn't know, but he was talking to his supervisor and I heard him say somebody crossed him.

Q: Do you know - -

A: And he said, she asked him, 'Did you recall the' - - 'recall the numbers,' and he said, 'No.'

Q: Do you know if there were any other vehicles involved here?

A: No.

Q: Did you see any other vehicles involved?

A: No.

(Coffey Affirm. Ex. F [Sackeyfio EBT] at 30, 31, 34, 38.) Non-party witness George White, who was also a passenger on the bus during the alleged incident, stated in his affidavit,

“I saw the plaintiff board the bus. Before she could sit, the driver rapidly accelerated the bus away from the stop, and then abruptly stopped the bus a few seconds later. When the bus came to a stop, it was located 1/3 to 1/2 a block away from Amsterdam Avenue, the next intersection up ahead.”

(Saliba Opp. Affirm. Ex. A [White Aff.].)

Defendants move for summary judgment on the ground that they were not negligent as a matter of law due to the emergency doctrine. In support of their motion, defendants submit the deposition testimony of bus operator Torrance Cameron (Coffey Affirm. Ex. G [Cameron EBT]) and reports completed after the alleged incident (Coffey Affirm. Ex. H.) During his deposition, Cameron testified that he stopped suddenly because he saw a car coming, the car was on Amsterdam Avenue on his right, and before he applied the brakes, he noticed that his light was green. (Coffey Affirm. Ex. G [Cameron EBT] at 22, 24-25.) According to the bus operator's daily trip sheet, “Customer fell down Amsterdam & 110th Street other vehicle traveling northbound ran red light.” (Coffey Affirm Ex. H.) According to the Supervisors Accident report, “B/O Cameron states that while approaching the intersection of W110st, heading east on Amsterdam Av a cream colored

sedan headed north on W110 failed to stop at a red light. B/O Cameron applied brakes to avoid a collision and a female customer standing near front of bus fell to floor. B/O called console for assistance.” (Coffey Affirm. Ex. H.)

DISCUSSION

“The proponents of a summary judgment 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 NY2d 320, 324 [1986].) If the plaintiff fails to make such a showing, the motion must be denied. (*Id.*) “Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so.” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980].) The issue in a summary judgment motion is “not whether plaintiff[] can ultimate establish liability, but, rather, whether there exists a substantial issue of fact in the case on the issue of liability which requires a plenary trial.” (*Barr v County of Albany*, 50 NY2d 247, 254 [1980].)

“To establish a prima facie case of negligence against a common carrier for injuries sustained by a passenger when the vehicle comes to a halt, the plaintiff must establish that the stop caused a jerk or lurch that was ‘unusual and violent. Proof that the stop was unusual or

violent must consist of more than a mere characterization of the stop in those terms by the plaintiff.”

(*Urquhart v New York City Tr. Auth.*, 85 NY2d 828, 830 [1995].) However, the common-law emergency doctrine

“recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonably and prudent in the emergency context, provided the actor has not created the emergency.”

(*Caristo v Sanzone*, 96 NY2d 172, 726 [2001], quoting *Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991].) Courts have applied the emergency doctrine to preclude liability for personal injuries when a bus operator's only option was to stop short. (See *Edwards v New York City Tr. Auth.*, 37 AD3d 157, 158 [1st Dept 2007].)

Defendants have not demonstrated entitlement to judgment as a matter of law because there is a triable question of fact as to whether the bus operator was faced with an emergency situation. According to Cameron's deposition testimony and other reports from the alleged incident, Cameron stopped the bus to avoid colliding with a vehicle that ran a red light at the intersection of Amsterdam Avenue and West 110th Street. However, according to plaintiff and the non-party witness, Cameron stopped 1/3 to 1/2 a block away from the subject intersection. The location of the bus raises a

triable question of fact as to whether Cameron was faced with an emergency situation. Therefore, defendants' motion for summary judgment is denied.

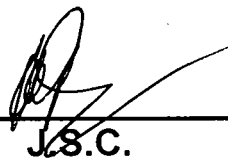
CONCLUSION

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is denied.

Dated: July 9, 2015
New York, New York

ENTER:



J.S.C.
HON. MICHAEL D. STALLMAN