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| Kapassakis v Metropolitan Transp. Auth. |
| 2015 NY Slip Op 32574(U) |
| January 26, 2015 |
| Supreme Court, Nassau County |
| Docket Number: 0023625/10 |
| Judge: Randy Sue Marber |
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

_____ X TRIAL/IAS PART 12
SOPHIE KAPASSAKIS,

Plaintiff,

Index No.: 0023625/10
Motion Sequence...03
Motion Date...12/17/14

-against-

METROPOLITAN TRANSPORTATION
AUTHORITY, LONG ISLAND BUS,
METROPOLITAN BUS AUTHORITY, KENOLD
MATHURIN, bus driver, and GOVERNMENT
EMPLOYEES INSURANCE COMPANY,

Defendants.

_____ X
Papers Submitted:
Order to Show Cause.....X
Affirmation in Opposition.....X

Upon the foregoing papers, the Order to Show Cause brought by the Plaintiff, Sophie Kapassakis, seeking an order, pursuant to CPLR § 3403 (a) (3), granting the Plaintiff a special preference for an immediate trial, is determined as hereinafter provided.

The Plaintiff commenced this action against the Defendants, Metropolitan Transportation Authority, Long Island Bus, Metropolitan Bus Authority, Kenold Mathurin, bus driver, and Government Employees Insurance Company, to recover damages for injuries suffered as a result of an automobile accident that occurred on July 26, 2010. On February 7, 2012, this Court granted the Plaintiff's summary judgment motion on the issue of liability.

On May 10, 2013, the parties entered into a Stipulation to Stay Trial due to the Plaintiff having undergone a cervical discectomy on November 16, 2012. On January 23, 2014, this Court granted the Plaintiff's motion for an order vacating the Note of Issue. On August 6, 2014, the parties signed a re-certification order, certifying the case for trial and directing the Plaintiff to file the Note of Issue within ninety days. On October 30, 2014, the parties entered into a stipulation extending the Plaintiff's time to file the Note of Issue to and including November 19, 2014. On November 19, 2014, the Plaintiff filed the Note of Issue.

The Plaintiff brings the instant application, by Order to Show Cause, requesting a special trial preference because of the severity of her injuries and financial hardship. In support of her application the Plaintiff submits her Affidavit, sworn to on November 13, 2014. The Plaintiff attests that as a result of the accident she has suffered serious injuries, that she is not employed due to her injuries and that she has been advised by physicians that she will not be able to return to work for the foreseeable future. (*See* Affidavit of Sophie Kapassakis annexed to the Notice of Motion) The Plaintiff attests that she receives \$1600 per month in child support and \$1,532 bi-weekly as disability from her former employer. (*Id.*) The Plaintiff attests that she is unable to pay her mortgage and taxes, which amounts to \$3,101.37 a month. (*Id.*) She further attests that she had to borrow money from a settlement funding company to meet her living expenses to support herself and her two children. (*Id.*)

The Plaintiff argues that based on the facts set forth in her Affidavit, she has shown that any delay in this action will worsen the Plaintiff's financial situation and physical

hardship. She further contends that justice would best be served by an early trial pursuant to CPLR § 3403 (a) (3).

In opposition, the Defendant contends that the Plaintiff's alleged indigence falls short of the criteria necessary to establish a basis for trial preference pursuant to CPLR § 3403 (a) (3). The Defendant argues that, based on the Plaintiff's own admissions that she receives \$1600 per month in child support and \$3,064 in disability, she is not indigent. The Defendant states that according to the United States Department of Health and Human Services, the 2014 Poverty Guideline in New York State, in a three person household, is \$19,790. (*See* Printout from the US Department of Health and Human Services website annexed to the Affirmation in Opposition as Exhibit "B") The Defendant argues that since the Plaintiff receives three times as much as the poverty guideline, she is not indigent.

The Defendant further argues that the Plaintiff's self-serving claims that she is indebted and lacks sufficient funds to meet her living expenses is insufficient to justify a special trial preference. The Defendant contends that the Plaintiff failed to set forth documents evidencing household income and expenses or that she is a recipient of public assistance. Additionally, the Defendant argues that the Plaintiff has failed to provide any medical proof to support her assertion that physicians have advised her that she will not be able to work in the foreseeable future due to her disability.

CPLR § 3403 (a) (3) states that civil cases shall be entitled to a preference when "an action in which the interests of justice will be served by an early trial." The Plaintiff claims that granting her a special trial preference would be in the interest of justice

because she is indigent. To meet the level of indigence to justify a trial preference, a party would have to show evidence such as documents evidencing her monthly household income and expenses, medical evidence that she is unable to work, or proof that she receives public assistance. (*See Roman v. Sullivan Paramedicine, Inc.*, 101 A.D.3d 443 [1st Dept. 2012]; *Cennane v. Lindholm*, 69 A.D.2d 848 [2nd Dept. 1979]; *Bee v. Henegan Const. Co., Inc.*, 2014 WL 3615883 [N.Y. Sup. Ct. July 18, 2014])

Although the Plaintiff alleges that she cannot afford to pay her monthly mortgage and taxes, she fails to provide any proof of her income and expenses. However, even if the Plaintiff provided proper evidence corroborating the facts set forth in her Affidavit, a special trial preference is still not justified. The case law shows that in order to justify a special trial preference, the Plaintiff must provide evidence of a severe disability preventing the Plaintiff from working, that she receives public assistance, or that her income falls below the poverty level. The facts alleged by the Plaintiff do not rise to the level of financial hardship to justify granting a motion pursuant to CPLR § 3403 (a) (3).

The Court further notes that this case is already calendared to appear in the DCM trial part on February 19, 2015.

Accordingly, it is hereby

ORDERED, that the motion by the Plaintiff, pursuant to CPLR §3403 (a) (3), seeking a special trial preference is **DENIED**.

This constitutes the decision and order of the Court.

DATED: Mineola, New York
January 26, 2015



Hon. Randy Sue Marber, J.S.C.

ENTERED

JAN 29 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE