

Amaro v New York City Tr. Auth.

2016 NY Slip Op 30461(U)

March 18, 2016

Supreme Court, New York County

Docket Number: 150131/2015

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

SARA M. AMARO,

Plaintiff,

INDEX NO. 150131/2015
MOTION DATE 1/28/16
MOTION SEQ. NO. 001

- v -

**NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY, AND
JOHN DOE, NAME BEING FICTITIOUS INTENDED
BEING THAT OF THE OPERATOR,**

Defendants.

The following papers, numbered 9-16, 18, 23, were read on this motion for summary judgment.

Notice of Motion —Affirmation — Exhibits A-E —Affidavit of Service	█ No(s).	<u>9-16</u>	█
Affirmation in Opposition	█ No(s).	<u>18</u>	█
Reply Affirmation	█ No(s).	<u>23</u>	█

Upon the foregoing papers, it is ordered that plaintiff's motion for summary judgment as to liability against defendants is denied.

Plaintiff alleges that, on September 16, 2014, she fell while attempting to board a M14-D bus at East 14th Street and 1st Avenue in Manhattan. According to plaintiff, the bus operator closed the door on her foot, and she fell when the door reopened.

Plaintiff now moves for summary judgment as to liability in her favor against defendants. At her deposition, plaintiff testified, with a Spanish interpreter, that she waited in line for the bus, and two people were in front of her in this line. (Eisen Affirm., Ex C, at 17.) According

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

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to plaintiff, “I start to go up into the bus, then I put my right leg –my right leg under the step. And at this moment the driver closed the door.” (*Id.* at 18.) Jacinth Scott, the bus operator, testified at her deposition, as follows:

“A. I remember I was at the bus stop, 17th Street and 1st Avenue and there were passengers boarding the bus. So there was three passengers still standing outside with no intention like they are getting on the bus. So when the passengers finished coming in I closed the door so the door started closing and I turned to look in my mirror to the left and when I turned back I realized the passenger foot was closed in the door.

Q. When you realized the passenger's foot was in the door, what did you do in response?

A. I opened back the door.

Q. When you opened back the door, what, if anything happened?

A. She fell.”

(Eisen Affirm., Ex D [Scott EBT], at 10.) Scott stated at her deposition that she was not looking at the door the entire time while it was closing. (*Id.* at 26.)

In opposition, defendants assert that there is a triable issue of plaintiff’s comparative negligence, in that plaintiff saw or should have seen the doors were closing and attempting to board as the bus door was closing. Scott testified as follows:

(Continued...)

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“Were you looking at the door the entire time while it was closing?”

A. No.

Q. Why not?

A. Because everybody who was coming inside already come [sic] inside. Those passengers were standing that don't need the bus. So when I started closing the door and I see the door started to the close and it I turned my head to check my mirror. I didn't expect there was someone coming inside, because I checked my right mirror before and there was no one coming. Only the same three passengers are going about their—hanging outside. I didn't expect that they were going to board the bus.”

Q. Just to clarify, the mirror -- let me ask you this: Did you actually see the doors close or did you only see the foot kind of stuck in the door?

A. When I turned back I was able to see her foot in the door.

Q. So the doors were already closed?

A. Yes.

Q. Was the person able to get their foot loose without you opening the doors?

A. No, they could not.”

(Scott EBT, at 27.)

(Continued...)

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Viewing the record in the light most favorable to the non-movants, the bus operator’s testimony raises triable, material issues of fact and credibility warranting denial of summary judgment. The key question is whether Scott acted reasonably under the circumstances. At issue is whether Scott acted reasonably when she decided to close the bus door, and whether Scott acted reasonably when she looked away while the door was closing. The answer to this question depends, in turn, on whether Scott reasonably believed that boarding had finished, and whether Scott could have halted the bus door from closing on the plaintiff’s foot had Scott been looking at the door the entire time.

According to plaintiff, her right foot was on the first step of the bus when the bus doors closed. By contrast, Scott stated that she closed the doors because Scott believed no one else wanted to board the bus. Whether Scott reasonably believed that no one else was boarding the bus presents issues of credibility for the trier of fact.

If Scott’s belief were reasonable, then a trier of fact might conclude, as defendants assert, that plaintiff attempted to board the bus just as the doors were closing, which would raise a question of fact as to her comparative fault. Because the record, when viewed in favor of the non-movants, presents a plausible scenario where plaintiff may be comparatively at fault, plaintiff may not be granted summary judgment in her favor against defendants. (*Maniscalco v New York City Tr. Auth.*, 95 AD3d 510 [1st Dept 2012].)

Dated: 3/18/16
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

