Jacobs v Metropolitan Transp. Auth.
2018 NY Slip Op 30615(U)
April 5, 2018
Supreme Court, New York County
Docket Number: 154652/2014
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** 2
Justice

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SANDER JACOBS,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, LONG ISLAND RAILROAD, MONTAUK BUS SERVICE, INC., SHERRY CASE

Defendants.

INDEX NO. 154652/2014

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for JUDGMENT - SUMMARY

In this personal injury action, defendants move for summary judgment dismissing the complaint. Plaintiff opposes. For the reasons that follow, the motion is granted.

On the evening of June 9, 2013, plaintiff and his daughter were traveling on the Long Island Railroad from Southampton to their home in New York City. When the train arrived at the Speonk station, the passengers were told that, due to a mechanical failure, they had to exit the train and board a school bus destined for the Babylon station, where additional trains would be available. The bus arrived at the Babylon station, and plaintiff attempted to exit the bus through the rear emergency exit, which another passenger had apparently opened. There were neither attendants nor stairs leading from the rear exit of the bus to the pavement below and, when plaintiff stepped down, he fell to the ground and sustained injuries. Plaintiff claims that defendants are liable for those injuries because the driver, defendant Sherry Case, "effectively suggested" that the rear exit was an acceptable path of egress.

"A common carrier owes a duty to an alighting passenger to stop at a place where the passenger may safely disembark and leave the area." (*Miller v Fernan*, 73 NY2d 844, 846 [1988]; *see Archer v New York City Tr. Auth.*, 25 AD3d 351, 352 [1st Dept 2006]; *Malawyer v New York City Tr. Auth.*, 18 AD3d 293, 294-295 [1st Dept 2005].) "A breach of this duty can depend on whether the carrier did anything to 'compel or even suggest' that the passenger walk across a defective path or whether the passenger 'chose [his] dangerous path without the guidance or discretion of the [carrier].'" (*Ausderan v City of New York*, 219 AD2d 562, 563 [1st Dept 1995], quoting *Blye v Manhattan & Bronx Surface Tr. Operating Auth.*, 124 AD2d 106, 112-114 [1st Dept 1987], *affd* 72 NY2d 1988 [1988]; *see Garcia v Hope Ambulette Serv. Corp.*, 307 AD2d 860, 860 [1st Dept 2003].) Lastly, the movant on a motion for summary judgment must satisfy his or her initial burden to "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," after which the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see Schmidt v One N. Y. Plaza Co. LLC*, 153 AD3d 427, 428 [1st Dept 2017]; *Bartolacci-Meir v Sassoon*, 149 AD3d 567, 570 [1st Dept 2017].)

The operative facts are not contested. Plaintiff does not dispute that the exit at the front of the bus was available and that it would have been reasonably safe for him to utilize it. There is not even an allegation that Case opened the emergency exit of the bus herself or that she told passengers to use it. Instead, plaintiff asserts that Case's announcement to the passengers that they had to move fast if they wanted to catch a train that was waiting at the platform, her inaction

upon hearing a buzzing alarm sound, and her failure to affirmatively tell passengers not to use the emergency exit, constituted a breach of duty as a common carrier.

Nothing rebuts Case's testimony at her deposition, however, that she was unable to see that the rear emergency exit had been opened or that the presence of many adults in her path precluded her from investigating the source of the alarm, which could have been caused by various harmless events. Even assuming that the announcement and alarm created what plaintiff characterizes as a "chaotic scene," plaintiff never testified that he was at any point told to use the emergency exit. Plaintiff's observation that other passengers had previously jumped from the back of the bus before he did cannot be construed as a suggestion emanating from Case that it was an appropriate means of egress or that he should do the same. There is no basis on which to conclude anything other than that plaintiff, without any suggestion from Case, chose to use the emergency exit at the rear of the bus rather than wait to exit through the front of the bus.

Defendants' duty to plaintiff as a common carrier was satisfied, as a matter of law, when the bus came to a stop and the front exit was opened for the passengers to use. (*See O'Lear v Alvarado*, 15 AD3d 637, 637 [2d Dept 2005]; *Georges v Rajnarine*, 277 AD2d 283 [2d Dept 2000]; *compare Diaz v City of New York*, 31 AD3d 299, 300 [1st Dept 2006].) Plaintiff failed to raise a question of fact as to whether Case suggested that the rear emergency exit of the bus was an appropriate path of egress. (*See Blye v Manhattan & Bronx Surface Tr. Operating Auth.*, 124 AD2d at 114; *compare Ausderan v City of New York*, 219 AD2d at 563.)

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment dismissing the complaint is granted, the complaint is dismissed in its entirety, and the Clerk is directed to enter judgment accordingly, with costs as taxed by the Clerk upon the submission of an appropriate bill of costs.

4/5/2018
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED	[ ]	DENIED	[ ]	NON-FINAL DISPOSITION	
	[X]	GRANTED			[ ]	GRANTED IN PART	[ ] OTHER
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