

Stark v New York City Tr. Auth.

2019 NY Slip Op 32832(U)

September 19, 2019

Supreme Court, Kings County

Docket Number: 511537/15

Judge: Kathy J. King

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At an IAS Term, Part 64 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 19th day of September, 2019.

P R E S E N T:

HON. KATHY J. KING,

Justice.

-----X
CARMEN STARK,

Plaintiff,

DECISION/ORDER

- against -

Index No. 511537/15

NEW YORK CITY TRANSIT AUTHORITY and JOHN DOE,

Motion Seq. No. 1

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF No.:

Notice of Motion/Cross Motion,	
Affirmation (Affidavit), and Exhibits Annexed _____	<u>14, 16</u>
Affirmation (Affidavit) in Opposition and Exhibits Annexed _____	<u>22</u>
Reply Affirmation (Affidavit) and Exhibits Annexed _____	<u>24</u>

Upon the foregoing papers, defendant New York City Transit Authority (NYCTA), moves in this personal injury action for an order, pursuant to CPLR 4404, setting aside the jury’s liability verdict for plaintiff, Carmen Stark (“Stark”)¹ or, alternatively, granting it a new trial on the basis that the verdict was contrary to the weight of the evidence. Plaintiff opposes the requested relief.

Background

Stark commenced this action by filing a summons and complaint, which alleges that she sustained injuries on October 12, 2014 aboard a NYCTA bus when its operator, Richard Rodriguez (“Rodriguez”), stopped short and caused her to fall. Subsequently, NYCTA interposed an answer denying Stark’s allegations and asserting various affirmative defenses.

A three-day jury trial to determine liability began on November 29, 2018, and jurors were

¹ Defendant’s request for relief contained in its notice of motion erroneously states that dismissal is warranted pursuant to CPLR 4404.

presented with various forms of evidence, including the testimonies of Stark, Rodriguez, and Richard Negron, a NYCTA bus dispatcher. Upon deliberation, the jury returned a verdict finding NYCTA 100% liable for Mrs. Stark's injuries. NYCTA now moves pursuant to CPLR 4404, to set aside the verdict, or for a new trial on the basis that the verdict was contrary to the weight of the evidence. Plaintiff submits opposition thereto.

In support of its motion, NYCTA proffers the trial transcript, together with court exhibits and contends that Stark's testimony fails to demonstrate that the bus stopped in such an unusual and violent manner as to support a finding of liability. NYCTA also highlights that Stark produced no other witnesses who could attest to her falling or the nature of the stop. Hence, NYCTA maintains that the court should set aside the verdict and dismiss the action based upon Stark's failure to establish a prima facie case.

Alternatively, NYCTA argues that the verdict should be set aside and a new trial ordered as the verdict is against the weight of the evidence. NYCTA again asserts that Stark's testimony is insufficient to support the jury's finding of liability. NYCTA also argues that a sequence of questions that plaintiff's counsel posed to Rodriguez were inappropriate, encroached on lawyer-client privilege, and improperly influenced the jury. Finally, NYCTA contends that Stark's testimony contains statements of fact that were contrary to the photographic evidence produced at trial. NYCTA argues that photographic evidence showing that the section of the bus where Stark fell did not have any fixtures, only a metal bar for passengers to stabilize themselves, demonstrably proves her testimony false. NYCTA, thus, asserts that the jury could not have reasonably relied upon Stark's testimony that she held a metal loop to secure herself to find liability, prior to the fall to support a finding of liability. Accordingly, NYCTA maintains

that the verdict is contrary to the weight of the evidence warranting vacatur of the verdict and a new trial.

In opposition, Stark asserts that granting such a drastic remedy requires the motion's proponent to show, based on the evidence, that *no* valid line of reasoning exists to justify preserving the jury's determination. Stark maintains that, contrary to NYCTA's assertions, a valid line of reasoning, consistent with the evidence produced at trial, supports the verdict. More particularly, Stark identifies portions of the trial transcript where (a) she testified to losing her grip due to the unexpected and violent short stop of the bus and (b) Rodriguez testified to applying the brake after the light turned red. Stark maintains that such testimony would permit the jury to validly conclude that the bus stopped short in such a manner as to impose liability on NYCTA and that the motion should be denied. In reply, NYCTA reiterates that the verdict is contrary to the weight of the evidence and should be vacated.

Discussion

As a rule, it is the prerogative of the jury to assess the credibility of witnesses, to resolve conflicting testimony and to determine all factual issues (*see Scott v Mason*, 155 AD2d 655, 656 [2d Dept 1989]; *Lonez v City of New York*, 121 AD2d 369, 370 [2d Dept 1986]; *Sheps v Hall, & Co., Inc.*, 112 AD2d 281, 283 [2d Dept 1985]). Nevertheless, CPLR 4404 (a) authorizes the court, in exercising its discretion, to set a jury verdict aside as against the weight of the evidence, upon finding that a jury could not have reached its conclusions on any fair interpretation of the evidence (*see Aprea v Franco*, 292 AD2d 478, 479 [2d Dept 2002]; *Nicastro v Park*, 113 AD2d 129, 133 [2d Dept 1985]; *Delgado v Board of Educ. of Union Free School Dist. No. 1 of Towns of Greenburgh & Mt. Pleasant.*, 65 AD2d 547, 547 [2d Dept 1978], *aff'd* 48 NY2d 643 [1979]). “The standard for determining whether a jury verdict is against the weight of the evidence is whether based on a preponderance of the evidence that the verdict could not

have been reached upon any fair interpretation of the evidence” (*Martin v New York City Tr. Auth.*, 48 AD3d 522, 523 [2d Dept 2008] [internal citations omitted]).

“For a court to conclude as a matter of law that a jury verdict is not supported by sufficient evidence . . . [i]t is necessary to first conclude that there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented at trial” (*Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]).

“The test is not merely whether the jury erred in its interpretation of the evidence, but whether any evidence exists to support the verdict” (*Kinney v Taylor*, 305 AD2d 466, 466 [2d Dept 2003], quoting *Barker v Bice*, 87 AD2d 908, 908 [2d Dept 1982]).

Here, NYCTA failed to demonstrate that the verdict should be set aside. The evidence produced at trial clearly demonstrates that the jury verdict was the product of a valid line of reasoning based upon permissible inferences. Specifically, Stark testified that “the bus made a very violent short stop, unexpected” (TT at 27, line 3) and Rodriguez attested that he did not press the brake until the light changed to red (TT at 87, line 13). The Court finds that such testimony, supports the inference made by the jury that Rodriguez applied the brake suddenly, resulting in a violent short stop causing Stark to fall and sustain her injuries.

NYCTA’s assertion that Stark testified to a physical impossibility is equally unavailing. It is undisputed that the bus transporting Stark contained metal loops to permit passengers to steady themselves while riding. It is also undisputed that a metal bar was available to passengers in the area where Stark was standing when the accident occurred. Stark testified to “hang[ing] on to the metal *thing* that you hang on to so you don’t fall” (TT at 26, lines 8-9 [emphasis added]). When her attorney characterized the stabilizing device as a metal loop, Stark simply responded to questions that used such terminology (TT at 26, lines 15-20; at 26, lines

24-25 through 27, line 1). Further, it is wholly permissible that the jury inferred that the metal loop referenced in Stark's testimony included the "metal thing" she used. The Court finds that NYCTA's remaining arguments to the extent not specifically addressed herein, lack merit.

Based on the foregoing, the Court finds that the evidence adduced at trial does not support NYCTA's contention that the jury's determination was based on insufficient evidence, and NYCTA's motion is denied in its entirety.

This constitutes the decision and order of this court.

ENTER,

Kathy J. King
HON. KATHY J. KING
J.S.C

HON. KATHY J. KING
JSC

KINGS COUNTY CLERK
FILED
2019 SEP 24 AM 8:16

[Signature]