

Torres v City of New York
2020 NY Slip Op 32914(U)
September 2, 2020
Supreme Court, New York County
Docket Number: 157525/2017
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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VICTOR TORRES,

Plaintiff,

- v -

THE CITY OF NEW YORK, MANHATTAN AND BRONX
SURFACE TRANSIT OPERATING AUTHORITY, NEW
YORK CITY TRANSIT AUTHORITY

Defendant.

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INDEX NO. 157525/2017
MOTION DATE 08/18/2020
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, the motion is decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on or about August 23, 2017, seeking to recover damages for the personal injuries allegedly sustained on March 14, 2017 at approximately 10:00 a.m., at the bus stop in front of 107 Dyckman Street in New York County. Plaintiff alleges that he was injured as he was traversing the area between the sidewalk curb and the front door of the New York City Transit Authority ("Authority") bus. Issue was joined by service of the Verified Answers of the Authority and the City of New York on September 21, 2017 and September 29, 2017, respectively. Plaintiff's Verified Bill of Particulars, dated November 21, 2017 alleges that the Authority was negligent, inter alia, in failing to provide a safe place for the plaintiff to board the M-100 bus. Defendant, Authority now moves for summary judgment, dismissing this action.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. Zuckerman v. City of New York, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595

(1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d 331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

As discussed in *Nowak v. City of New York*, 175 A.D.3d 567, 567–68 (2d. Dept. 2019), “A transit company or a common carrier is under a duty to provide a prospective passenger with a reasonably safe, direct entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance (*see Almonte v. City of New York*, 123 A.D.3d 1067, 1068; *Saidoff v. New York City Tr. Auth.*, 105 A.D.3d 726, 727; *Kasper v. Metropolitan Transp. Auth. Long Is. Bus*, 90 A.D.3d 998, 999; *Mahase v. Manhattan & Bronx Surface Tr. Operating Auth.*, 3 A.D.3d 410, 410; *Blye v. Manhattan & Bronx Surface Tr. Operating Auth.*, 124 A.D.2d 106, *aff'd* 72 N.Y.2d 888). ‘Stated differently, imposing liability requires a finding that the placement of the bus dictates that the passenger, in order to board the bus, must negotiate a dangerous or defective

path' (*Blye v. Manhattan & Bronx Surface Tr. Operating Auth.*, 124 A.D.2d at 111–112; see *Meyers v. City of New York*, 215 A.D.2d 543).

In support of its motion, the Authority submits the deposition transcripts of plaintiff and the Bus Operator, Juan Rodriguez, together with supporting exhibits, which establish as follows: On March 14, 2017, plaintiff was injured while attempting to board an M100 bus at the bus stop in front of 107 Dyckman Street in New York County. When plaintiff arrived at the bus stop, he observed an accumulation of snow on the sidewalk and in the street, which had not been cleared from the snowfall the prior day. The bus stopped five or six feet from the curb and there was snow approximately three inches deep covering the distance between the bus and the curb. Plaintiff traversed four to six feet of the distance to the bus, almost to the front of the bus, when his right foot slipped in dirty snow causing him to fall on his left knee and elbow. Mr. Rodriguez had no recollection of the subject accident, but based upon the supporting evidence, was the driver of the bus at issue. Mr. Rodriguez testified as to the general procedures for stopping a bus at a bus stop, specifically that: If there is snow or ice in the roadway which comprises the bus stop, bus operators are instructed to stop the bus away from any snow or ice along the curb. This is for the dual purpose of allowing intending passengers adequate room to get around any snow or ice and get to the bus door while also enabling the bus operator to avoid a situation where a bus may slide on snow or ice while coming to a stop in such an area. The operator determines on a case by case basis when it is too dangerous or slippery to drive the bus onto the snow to get close to the curb. The decision is made based on how clear the streets are and how slippery the area appears as the bus approaches the bus stop. The general rule is to stay away from the curb if there is snow or ice in the bus stop area.

As plaintiff's undisputed testimony is that he fell while almost at the front of the bus, the Authority has failed to establish that in order to board the bus, plaintiff was not required to negotiate a dangerous or defective path. As movant has failed to establish a *prima facie* entitlement to summary judgment, there is no need to examine the sufficiency of plaintiff's opposition papers.

Defendant's motion is hereby denied in its entirety.

9/2/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE