SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART TR-2

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RACHEL HARRINGTON,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY, and "JOHN DOE",

Defendants.

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HON. THOMAS P. ALIOTTA

DECISION AND ORDER

Index No. 150094/2017

Motion No. 005

Recitation as required by CPLR 2219(a) of the following papers numbered "1" through "4" were marked fully submitted on 15th day of December 2021:

	Papers Numbered
Defendant's Notice of Motion, Statement of Material Facts, Affirmation and Exhibits (NYSCEF 106-120)	1, 2
Plaintiffs' Affirmation in Opposition, Response to Statement of Material Facts with Exhibits (NYSCEF 125-128)	3
Defendant's Reply Affirmation (NYSCEF 129)	4

Upon the foregoing papers, defendant, NEW YORK CITY TRANSIT AUTHORITY's, motion for an order pursuant to CPLR § 3211 and § 3212 is decided as follows:

On May 16, 2016, plaintiff filed a Notice of Claim alleging that on March 6, 2016, "I slipped on something on the stairs in the back/rear exit. I fell and broke 7 bones in my foot" (NYSCEF 36). Thereafter, she commenced this action to recover damages for her injuries against defendant NEW YORK CITY TRANSIT AUTHORITY (hereinafter "Transit").

FACTS

It is undisputed that plaintiff was a passenger aboard an S44 bus on March 16, 2016 at approximately 1:30 P.M. when the farebox began to smoke. The bus driver instructed all passengers to exit the rear of the bus. This exit was a platform without steps. It was a sunny day, without rain.

Defendant disputes plaintiff's allegations that as she exited the rear of the bus, she slipped and fell on a wet/slippery substance existing on the steps of the bus. First, defendant argues that even assuming this to be true, defendant did not have actual or constructive notice of the existence of the substance (NYSCEF 108, ¶2). This is reinforced by plaintiff's testimony that she could not identify the substance since she did not see it prior to her fall. Additionally, defendant relies upon the Operator's Vehicle Condition Report completed after a pre-trip inspection on the date of accident at 10:05 A.M. There were no hazardous slipping conditions at the time of this pre-trip inspection approximately three hours prior to plaintiff's accident (NYSCEF 42, pp. 13-15; and NYSCEF 45, pp. 18-20).

Second, based upon the video from the bus, defendant posits that the proximate cause of plaintiff's fall was not this unidentified liquid, but rather, plaintiff's own actions when she "leaped from the rear bus platform to the sidewalk outside the bus". Defendant also relies upon plaintiff's emergency room records from Richmond University Medical Center (NYSCEF 119), wherein it is notated that her accident was due to a "misstep off the bus."; and her statement to the Transit Supervisor at the scene that she "missed a step" (NYSCEF 118). In response, plaintiff denies making these statements and attests that she was "in fear of danger" because of a strong scent of gasoline and significant smoke emitting from the fare box" as she exited the rear of the bus (NYSCEF 182, ¶3).

When deciding a summary judgment motion the Court's role is solely to identify the existence of triable issues, not to determine the merits of any such issues (*Vega v. Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v. Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court views the evidence in the light most favorable to the nonmoving party and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v. Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence or where the credibility of the witnesses is in question (*see Cameron v. City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]). The failure of the movant to make such a *prima facie* showing also requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Weingrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once that initial burden has been satisfied, the burden shifts to the opposing party to come forward with sufficient evidence to raise a triable issue of fact (Id.). Since summary judgment is the procedural equivalent of a trial, the presence of any significant doubt as to whether there is a material issue of fact, or where an issue of fact is "arguable", the motion must be denied (*see Phillips v. Kantor & Co.*, 31 NY2d 307, 311 [1972]).

A common carrier may be liable for a potentially dangerous condition caused by some type of slippery substance on the steps of a bus only if plaintiff demonstrates that it created the condition or had actual or constructive notice of the condition and a reasonable opportunity to cure (*Gordon v New York City Transit Authority*, 267 AD2d 201, 202 [2nd Dept. 1999]). Once notice is established, plaintiff must still demonstrate the defect was a proximate cause of the damages (*Daeira v. Genting New York, LLC*, 173 AD3d 831, 835 [2d Dept. 2019]). Therefore,

since there can be more than one cause of an accident (*Jaber v. Todd,* 171 AD3d 896, 898 [2d Dept. 2019]), proximate cause is generally a question for the jury (*Jaber v. Todd,* 171 AD3d 898). Nevertheless, "liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes" (*Castillo v. Amjack Leasing Corp.,* 84 AD3d 1298, 1298-1299 [2d Dept. 2011]). Under such circumstances, a defendant is entitled to summary judgment (Id.at 1299). In *Castillo,* the summary judgment was warranted despite allegations of negligent design of a parking lot as the sole proximate cause of the accident was the truck driver's failure to look when backing up a truck.

Here, plaintiff has failed to rebut defendant's *prima facie* entitlement to summary judgment (*Gordon v New York City Transit Authority,* 267 AD2d 202). Construing the evidence in the light most favorable to plaintiff, she has not come forward with evidence that defendant had actual or constructive notice of a slippery substance on the steps at any time between 10:05 A.M. and 1:30 P.M. (Id.). Since plaintiff is unable to identify the source of the alleged substance, the Court holds as a matter of law that defendant also did not have actual knowledge of the tendency of a particular dangerous condition to reoccur to impute constructive notice of a reoccurrence (*Rodriguez v. Franklin Development Co., Inc.,* 43 AD3d 1134, 1135 [2d Dept. 2007]), and it may have been deposited on the steps only minutes before her accident (*Gordon v. American Museum of Natural History,* 67 NY2d 836 [1986]). Finally, the smoking fare box, as a matter of law, was not a substantial factor contributing to the happening of the accident, but instead, merely furnished the opportunity for plaintiff's exit and fall from defendant's bus on the alleged unknown substance (*Castillo v. Amjack Leasing Corp., supra*). Therefore, plaintiff's remaining arguments, including the fact that discovery as to the fare box is not complete pending the outcome of an appeal, are without merit.

Accordingly, it is hereby:

ORDERED, that defendant's motion for an order pursuant to CPLR § 3212 granting summary judgment dismissing this action in its entirety is granted; and it is further

ORDERED, that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER,

HON. THOMAS P. ALIOTTA, J.S.C.

DATED: January 22, 2022