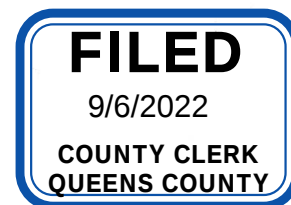


Mee T. Leung v MTA Bus Co.
2022 NY Slip Op 35262(U)
September 2, 2022
Supreme Court, Queens County
Docket Number: Index No. 704724/2019
Judge: Maurice E. Muir
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



MEE T. LEUNG,

IAS Part - 42

Plaintiff,

Index No.: 704724/2019

-against-

Motion Date: 9/16/21

MTA BUS COMPANY and JOHN DOE, being
fictitious name of the operator of Defendant's
MTA BUS COMPANY bus, the true name being
unknown to Plaintiff,

Motion Cal. No. 19

Motion Seq. No. 3

Defendants.

The following electronically filed ("EF") documents read on this motion by the Metropolitan Transportation Authority Bus Company ("MTA" or "defendant") for order pursuant to CPLR § 3212 (b), granting summary judgment in favor of defendant, on the basis that defendant is not liable for Plaintiff's alleged incident together with such other and further relief as this court may deem just, proper and equitable.

	Papers Numbered
Notice of Motion-Affirmation in Support-Exhibits.....	EF 33 - 41
Affirmation in Opposition-Exhibits.....	EF 45 - 47
Reply Affirmation-Exhibits.....	EF 48 - 50

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Mee T. Leung ("Ms. Leung" or "plaintiff") allegedly sustained on a bus owned by the MTA. In particular, Ms. Leung alleges that on March 25, 2018, at approximately 10:00 p.m., she boarded the Q23 Bus at the bus stop known as Rego Park 108 St/62 Drive, located on 108th Street at near its intersection with 62nd

Drive in the County of Queens, City and State of New York. As she was trying to sit down, the bus suddenly and violently accelerated, which caused her to fall (“subject incident”). At the time of the incident, Ms. Leung was 81 years old; and she allegedly sustained serious injuries (e.g., right shoulder rotator cuff tear, lumbar spine herniation, rib fracture, etc.) as a result of the subject incident. On March 19, 2019, the plaintiff commenced the instant action; and on April 24, 2019, issue was joined. Now, the MTA moves, pursuant to CPLR § 3212, for an order granting it summary judgment dismissing the complaint.

In support of the instant motion, MTA argues that the video footage demonstrates that the MTA Bus did not begin moving until after plaintiff had fully boarded the bus, completed paying for her ride with her MetroCard, turned towards the rear of the bus, and walked approximately ten (10) steps towards its center. The MTA driver only reached a speed of 3 miles per hour (“MPH”) before plaintiff (who was carrying multiple large bags across/around her body and a cane) began losing her balance. Within two (2) seconds of losing her balance, speed of the bus was only 3 MPH. In total, the bus moved forward approximately 1- 2 ½ car lengths during the entire duration of the subject incident. Moreover, MTA argues that during the incident, no other passengers lost their balance or fell due to the subject Bus’s movement. In fact, the movement of the subject bus was so insignificant that three (3) unsecured plastic bags sitting on an empty seat(s) were not even caused to slide or move position due to the subject bus’ movement.

In opposition, counsel for the plaintiff argues that “. . . MTA's motion should be denied as the bus accelerated in a sudden, violent, and unusual manner which caused plaintiff to fall and sustain serious injuries. Specifically, there is objective evidence of the force of the acceleration sufficient to establish an inference that the movement was extraordinary and violent, of a different class than the jerks and jolts commonly experienced in city bus travel and, therefore, attributable to the negligence of defendant.” Moreover, plaintiff’s counsel argues that “. . . MTA violated MTA policy by accelerating the bus before the elderly plaintiff could sit down on the bus. As such, defendant MTA's motion should be denied in its entirety.” In reply, MTA argues that “. . . the Court of Appeals in *Sherman v. Robinson*, 80 N.Y.2d 483, 489 n. 3 (1992) held that a ‘violation of a company's internal rules is not negligence in and of itself, and where such rules require a standard that transcends reasonable care, breach cannot be considered evidence of negligence.’” In reliance upon *McLeod v. Country of Westchester*, 38 AD3d 624, 625 [2d Dept 2007], MTA further argues that the Appellate Division, Second Department, held that “[t]he operator of the bus [is] not required to wait until the plaintiff found a seat before proceeding, and

absent any claim that the operation of the bus was extraordinary and violent, of a different class than the jerks and jolts commonly experienced in city bus travel the plaintiff failed to raise a triable issue of fact in opposition to the motion.” In further support of the instant motion, MTA argues that pursuant to Section 392.62 of the Federal Motor Carrier Safety Regulations, it provides that “[n]o person shall drive a bus ... unless (a) all standees on the bus are rearward of the standee line.” MTA also contends that the plaintiff failed to sit down in the first row of seats, which are reserved for senior citizens: Rather, the plaintiff elected to bypass those vacant seats and to proceeded further into the bus. Additionally, MTA argues that “[p]laintiff’s allegation that the subject bus was attempting to ‘get past a red light’ when the accident occurred is wholly and indisputably refuted by the video surveillance footage.” Lastly, MTA argues that “[p]laintiff never authenticated the hospital records submitted in support of her motion which purportedly show she sustained a fracture and, therefore, failed to lay a proper foundation for the admissibility of the records.”

“To establish a prima facie case of negligence against a common carrier for injuries sustained by a passenger as a result of the movement of the vehicle, the plaintiff must demonstrate that the movement was unusual and violent, rather than merely one of the sort of ‘jerks and jolts commonly experienced in city bus travel’” (*Tomaszycki v. New York City Tr. Auth.*, 194 AD3d 977 [2d Dept 2021], quoting *Urquhart v. New York City Tr. Auth.*, 85 NY2d 828, 830 [1995]). The plaintiff’s proof must provide objective evidence of the force of the movement sufficient to establish an inference that the movement was extraordinary and violent, and therefore attributable to the negligence of the defendant (*see Urquhart v. New York City Tr. Auth.*, 85 NY2d 828, 830 [1995]; *Orji v. MTA Bus Co.*, 204 AD3d 1027 [2d Dept 2022]; *Mastrantonakis v. Metropolitan Transportation Authority*, 170 AD3d 823 [2d Dept 2019]).

Here, the court finds that viewing the evidence in the light most favorable to the plaintiff, MTA established its prima facie entitlement to judgment as a matter of law: In particular, MTA demonstrated that the movement of the bus was not unusual and violent or of a “different class than the jerks and jolts commonly experienced in city bus travel.” (*Tomaszycki v. New York City Tr. Auth.*, 194 AD3d 977 [2d Dept 2021]; *Orji v. MTA Bus Co.*, 204 AD3d 1027 [2d Dept 2022]; *Mastrantonakis v. Metropolitan Transportation Authority*, 170 AD3d 823 [2d Dept 2019]). According to the video surveillance footage, the bus was only going 3 mph when the plaintiff fell; and the other passengers were not affected by the bus’ acceleration. In fact, the other passenger, who entered the bus after the plaintiff was still standing when the plaintiff fell; and

the other passenger's bags neither moved nor slide on the vacant seats when the bus accelerated: In fact, none of the other passengers on the bus were affected by the bus's acceleration. It is also noteworthy that the plaintiff did not select to sit in one of the empty front seats, which were reserved for senior citizens; and the bus driver did not move the bus until the plaintiff was in the middle of the bus (i.e., pass the "white standee line"). Contrary to counsel's contentions "... the bus did [not] suddenly and violently accelerated (sic) causing plaintiff to be 'thrown down the bus aisle' and onto the ground." Moreover, the plaintiff's contention that the subject bus was attempting to get past a red light is contrary the video surveillance footage: Rather the video surveillance footage shows that the bus driver had the red light when he stopped to pick-up the plaintiff and the other passenger. Under the circumstances, the court finds that the plaintiff failed to demonstrate that the movement of the bus was unusual and violent, and of a different class than the jerks and jolts commonly experienced in city bus travel. (*see Mayorga v. Nassau Inter-County Express [Nice] Bus*, 178 AD3d 1030 [2d Dept 2019]; *Alandette v. New York City Tr. Auth.*, 127 AD3d 896 [2d Dept 2015]; *Gioulis v. MTA Bus Co.*, 94 AD3d 811, 812-813 [2d Dept 2012]; *but see, e.g., Castillo v. MTA Bus Company*, 164 AD3d 620 [2d Dept 2018]). Furthermore, the court finds that the plaintiff failed to provide the court evidence (e.g., hospital record) in admissible form; and she failed to provide the court with a copy of her deposition transcript in opposition to the instant motion for summary judgment. More importantly, the plaintiff failed to raise a triable issue of fact.

Accordingly, it is hereby

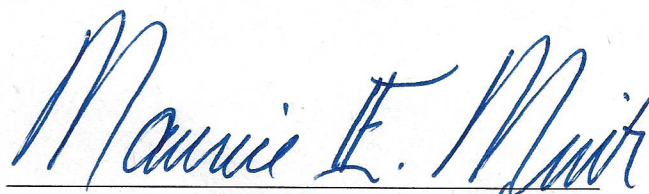
ORDERED that Metropolitan Transportation Authority Bus Company's motion for summary judgment, pursuant to CPLR 3212, is granted; and it is further,

ORDERED that the complaint against Metropolitan Transportation Authority Bus Company is dismissed, in its entirety, with prejudice; and it is further,

ORDERED that Metropolitan Transportation Authority Bus Company shall serve a copy of this decision and order with notice of entry upon the plaintiff and the clerk of this court, via certified mail and NYSCEF, on or before September 30, 2022.

The foregoing constitutes the decision and order of the court.

Dated: September 2, 2022
Long Island City, New York


MAURICE E. MUIR, J.S.C.