

**Bonesteel v New York City Tr. Auth.**

2023 NY Slip Op 30661(U)

March 3, 2023

Supreme Court, New York County

Docket Number: Index No. 151993/2020

Judge: Denise M. Dominguez

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 151993/2020

CHRISTINE BONESTEEL,

MOTION DATE

Plaintiff

MOTION SEQ. NO. 001

- v -

NEW YORK CITY TRANSIT AUTHORITY, JOHN DOE

DECISION AND ORDER ON MOTION

Defendant

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for JUDGMENT - SUMMARY

Upon review of the above listed documents and after hearing oral arguments, Defendant NEW YORK CITY TRANSIT AUTHORITY's motion is granted.

This personal injury matter arises out of a November 28, 2018 incident that occurred while Plaintiff CHRISTINE BONESTEEL was a passenger of the Defendant's bus, bearing bus #5278, as the bus began to drive away from the bus stop near 8th Avenue and Bleeker Street in Manhattan.

The Plaintiff's summons with notice and complaint were filed on February 24, 2020 (NYSCEF Doc. #1, 2). Defendant NEW YORK CITY TRANSIT AUTHORITY joined issue by the filing of an answer on or about July 22, 2020 (NYSCEF Doc. #4). Defendant now moves, pro note of issue, for summary judgment, dismissing the Plaintiff's complaint pursuant to CPLR §3212.

In support of the motion, the Defendant submits an affirmation in support with corresponding exhibits including the surveillance camera footage from the bus (NYSCEF Doc. #9, 11, 12, 13, 14), a statement of material facts (NYSCEF Doc. #10), supporting affidavit (NYSCEF Doc. #15) and a reply affirmation (NYSCEF Doc. #34). In opposition to the motion, the Plaintiff submits an affirmation in opposition with corresponding exhibits (NYSCEF Doc. #29, 30, 31, 32), a response to the Defendant's statement of material facts (NYSCEF Doc. #28) and an affidavit from the Plaintiff (NYSCEF Doc. #27).

CPLR §3212 provides any party in any action, including in a negligence action, to move for summary judgment. (CPLR §3212 [a], *Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853 [1974]). The party seeking summary judgment, even if unopposed, has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form (*see* CPLR §3212 [b], *Voss v Netherlands Ins. Co.*, 22 N.Y.3d 728, 734, 8 N.E.3d 823 [2014], *Giuffrida v Citibank Corp.*, 100 N.Y.2d 72, 81, 790 N.E.2d 772 [2003], *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324–25, 501 N.E.2d 572, 574 [1986], *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment 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 N.Y.2d 320, 324, 501 N.E.2d 572, 574 [1986]).

Upon review, Defendant NEW YORK CITY TRANSIT AUTHORITY has met its *prima facie* burden of establishing a right to judgment as a matter of law and the Plaintiff has failed to raise a triable issue of fact.

Plaintiff asserts in the complaint that the Defendant was negligent as its employee and bus operator (identified as John Doe in the caption) improperly and negligently caused the bus to stop short and that this sudden and unexpected stopping of the bus caused the Plaintiff to fall to the ground and sustain injury.

At her August 20, 2019 50-h hearing, the Plaintiff testified that upon boarding the bus, she walked 6 to 7 steps walking to her seat. However, prior to reaching her seat, the bus “took off” and then “stopped short”, causing her to fall backwards sustaining injuries. (NYSCEF Doc. #32). The Plaintiff’s affidavit in opposition to the motion asserts that after she took a couple of steps toward her seat, the bus began to pull away from the stop and “either lurched forward rapidly or stopped short”, which caused her to lose her balance and fall backwards. (NYSCEF Doc. #27).

Defendant NEW YORK CITY TRANSIT AUTHORITY argues that the bus movement was not unusual or violent and submits the video surveillance footage from bus #5278 (NYSCEF Doc. #14) in support of the motion. The video surveillance footage is authenticated by a corresponding affidavit from Jazmin Orea, a Video Data Manager for Safefleet, which contracts with Defendant NEW YORK CITY TRANSIT AUTHORITY regarding bus videos, attesting that the bus video submitted is a true and accurate copy of the footage.

Upon review, the video surveillance from bus #5278 provides footage from eight different cameras depicting the interior and exterior of the bus, as well as the rate of the speed of the bus. The video footage shows that at approximately 12:12:43, bus #5278 comes to a stop at the subject bus stop. At 12:12:51 the Plaintiff is the first passenger to board the bus through the front doors, followed immediately by one more individual. The Plaintiff pays her fare at 12:13:10 while the doors of the bus are closing. The Plaintiff then begins to walk down the aisle of the bus to find a seat. By 12:13:16, the Plaintiff has walked past the standee line. As she is walking towards a seat, the Plaintiff does not hold on to any of the available poles or railings. The bus begins to move away from the bus stop at 12:13:20. The Plaintiff begins to fall backwards at 12:13:21. The bus comes to a stop at 12:13:21. Between the time the bus begins to move and the time it comes to a stop, its highest rate of speed is 1mph.

“To establish a *prima facie* case of negligence against a common carrier for injuries sustained by a passenger when the vehicle comes to a halt, the plaintiff must establish that the stop caused a jerk or lurch that was “unusual and violent”. Proof that the stop was unusual or violent must consist of more than a mere characterization of the stop in those terms by the plaintiff.” (*Urquhart v. New York City Transit Auth.*, 85 N.Y.2d 828, 829–30, 647 N.E.2d 1346 [1995] citations omitted). When alleging that a bus came to an unexpected or abrupt stop, objective evidence should be provided “sufficient to establish an inference that the stop 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” *Id.*; see *Castillo v. New York City Transit Auth.*, 188 A.D.3d 484, 485, 133 N.Y.S.3d 576, 577 [1<sup>st</sup> Dept 2020]).

The Defendant have met their *prima facie* burden as they have submitted evidence which demonstrates that the bus movement was not unexpected, unusual or violent. The video surveillance from bus #5278 shows the bus moved forward after admitting all awaiting passengers, after closing its doors and after all passengers had moved passed the standee line. The video also shows that the bus gradually moved forward at 1mph and slowly came to a stop. The video footage does not show the bus coming to a sudden stop or operating in any violent manner. (*See Holmes v. New York City Transit Auth.*, 166 A.D.3d 530, 86 N.Y.S.3d 727, 728 [1<sup>st</sup> Dept 2018]).

The Plaintiff fails to raise a triable issue of fact in opposition to the motion. Although the Plaintiff alleges that the bus operator “lurched forward rapidly” or “stopped short”, the Plaintiff’s 50-h hearing testimony and affidavit are contradicted by the video surveillance footage from the

bus. (see Batista v. Metro. Transportation Auth., 210 A.D.3d 487, 487–88, 178 N.Y.S.3d 45, 46 [1<sup>st</sup> Dept 2022]). The Plaintiff’s argument that the accident occurred because the bus unexpectedly moved forward quickly is unavailing as the video surveillance footage shows that the bus was traveling at only 1mph. The Plaintiff’s argument that the accident occurred because the operator stopped short is also unavailing as the video does not show any such movement by the bus operator.

Accordingly, the Defendant NEW YORK CITY TRANSIT AUTHORITY’s motion for summary judgment pursuant to CPLR §3212 is granted.


It is hereby,

ORDERED that the motion for summary judgment of Defendant NEW YORK CITY TRANSIT AUTHORITY is granted and the complaint is dismissed against the defendant; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of Defendant NEW YORK CITY TRANSIT AUTHORITY dismissing the claims made against them in this action.

3/3/2023  
DATE

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

  
**HON. DENISE M. DOMINGUEZ**  
 J.S.C.