

Sacklow v New York City Tr. Auth.

2023 NY Slip Op 31008(U)

March 29, 2023

Supreme Court, New York County

Docket Number: Index No. 160308/2017

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 160308/2017
JEANNE SACKLOW, MOTION SEQ. NO. 002

Plaintiff

- v -

NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN
AND BRONX SURFACE TRANSIT OPERATING
AUTHORITY, METROPOLITAN TRANSPORTATION
AUTHORITY, JOHN DOE,

**DECISION AND ORDER ON
MOTION**

Defendant

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 73, 74,
75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

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

Upon reading the above listed documents and having heard oral arguments, for the reasons that follow, Defendants' motion for summary judgment is denied.

Background

This personal injury matter arises out of an alleged incident in the County, City and State of New York on December 14, 2016. Plaintiff alleges that while a passenger on Defendant's bus, bearing bus #5545, on the M101 route as the bus was driving along Lexington Avenue, near its intersection with 71st Street, she sustained injuries when the bus was cut off by unknown vehicle, causing the bus to stop suddenly and violently.

By order dated August 3, 2017, (J. Sokoloff), Plaintiff was permitted to file a late notice of claim. On November 17, 2017, Plaintiff filed a summons and complaint (NYSCEF Doc. #86). Defendants joined issue by the filing an answer on or about January 3, 2018 (NYSCEF Doc. #70).

Defendants now move post-note of issue for summary judgment pursuant to CPLR §3212. Plaintiff opposes.

Discussion

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 NY2d 361 [1974]). The party seeking summary judgment has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form (*see* CPLR §3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). Only when the moving party meets this burden does the burden shift to the opposing party to produce evidentiary proof in admissible form establishing the existence of a material issue of fact requiring a trial (*Alvarez*, 68 NY2d 320).

In support of the motion, the Defendants submit Plaintiff's notice of claim and Plaintiff's deposition transcript (NYSCEF Doc. #68, 69, 70, 71). Defendants first argue that they are not liable for Plaintiff's accident because the bus operator was confronted with an emergency situation requiring a sudden stop. Secondly, Defendants argue that there is no evidence that the movement of the bus was unusual or violent. Upon review, the evidence submitted by Defendants is insufficient to meet their *prima facie* burden for judgment as a matter of law.

Although "[a] defendant [motor vehicle driver] is not liable where he or she is faced with a sudden and unforeseen occurrence that was not of his [or her] own making", nonetheless, the Defendants must submit sufficient evidence to support their theory (*Cropper v. Stewart*, 117 AD3d 417, 418 (1st Dept 2014)). Defendants argue that their bus operator is not liable because he was cut off by an unknown vehicle. Yet, to establish this, Defendants rely solely upon Plaintiff's notice of claim that states that the bus was cut off by an unknown vehicle.

However, Plaintiff at her deposition testified that she did not know why the bus came to a sudden stop (NYSCEF Doc. #71). According to her testimony, she nor any other passengers fell to the floor. She further testified that she did not have any conversation with the bus operator including advising the bus operator of her injuries and did not receive any medical attention at the scene. After sustaining the alleged injuries, she remained on the bus, exited at 58th Street and then went to her office.

The Defendants do not offer any other testimony, such as an affidavit from the bus driver or any other evidence supporting this theory. Further, the caselaw relied upon by Defendants are distinguishable from this action since in those cases the movants relied upon substantial testimony and evidence to establish an unexpected emergency requiring a sudden stop (*see e.g. Nieves v. Manhattan & Bronx Surface Transit Operating Auth.*, 31 AD2d 359 [1st Dept 1969]).

Defendants also argue entitlement to judgment based on the defense that the bus operator's movements were not unusual or violent. To support this theory, Defendants rely solely on case law. It is well known that "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" (*Urquhart v. New York City Transit Auth.*, 85 NY2d 828, 829-30 [1995] *citations omitted*; *see Castillo v. New York City Transit Auth.*, 188 AD3d 484 [1st Dept 2020]). Yet this argument also fails not only because it is not supported by evidence but also because it contradicts Defendants' first argument that they are not liable because their bus operator made an emergency and sudden stop. Nor do Defendants provide any affidavit, testimony or any other evidence establishing that the bus operator's driving was simply associated with ordinary bus travel and was not extraordinary and violent in nature

causing Plaintiffs allege injuries (see *Hairston v. Liberty Behav. Mgmt. Corp.*, 157 AD3d 404 [1st Dept 2018]; *Artalyan, Inc. v. Kitridge Realty Co.*, 79 AD3d 546 [1st Dept 2010]).

Since Defendants have not met their burden of entitlement to judgment as a matter of law, the sufficiency of Plaintiff's opposing papers are immaterial (see *Alvarez*, 68 NY2d 320). Accordingly, for the above reasons, Defendants' motion for summary judgment pursuant to CPLR §3212 is denied.

It is hereby,

ORDERED that the motion for summary judgment by Defendants NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY's is denied.

3/29/2023
DATE

CHECK ONE:

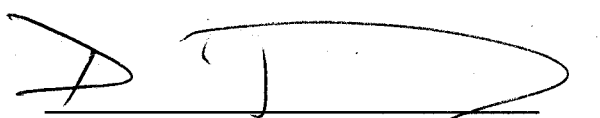
APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE


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