

Intelli v New York City Dept. of Transp.

2023 NY Slip Op 31103(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 162060/2019

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

-----X

GEORGEEN INTELLI,

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
THE CITY OF NEW YORK,

Defendants.

-----X

INDEX NO. 162060/2019
MOTION DATE 08/16/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 were read on this motion to DISMISS.

Plaintiff's complaint alleges that on July 15, 2019 plaintiff was injured when she tripped and fell on the Staten Island Ferry (the "Ferry"). Plaintiff alleges, specifically, that when the Ferry reached the Staten Island dock, plaintiff stood up her from seat, at which point the boat jerked forward, slamming into the dock, causing her to fall and sustain injuries (NYSCEF Doc. No. 14 [Compl. at ¶¶5-7). Plaintiff alleges that this fall was due to the negligence of defendants and their employees in their operation of the Ferry, including carelessly and negligently causing the Ferry to be operated at a high or excessive rate of speed close to the Staten Island dock (Id. at ¶8). Defendants the City of New York and New York City Department of Transportation (collectively, the "City") now move, pursuant to CPLR §3211(a)(7) or, alternatively CPLR §3212, to dismiss this action.

In support of its CPLR §3211 motion, the City argues that the complaint fails to allege that the motion of the Ferry was more than an ordinary "jerk" sufficient to state a negligence claim

against defendants, as a common carrier. The City also argues that plaintiff is precluded from asserting that the Ferry collided with the dock, as she failed to plead this fact in her notice of claim or complaint.

The City further argues, in the alternative, that it is entitled to summary judgment dismissing this action as it has established, prima facie, through undisputed evidence that plaintiff's fall was not caused by any sudden movement of the Ferry. In support of its summary judgment motion the City submits, inter alia, an authenticated CCTV video of plaintiff's time on the Ferry, including plaintiff's fall (NYSCEF Doc. No. 22 [CCTV footage]).

DISCUSSION

That branch of the City's motion to dismiss the complaint pursuant to CPLR §3211(a)(7) is denied. On such a motion, the pleadings are to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleadings the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (See Leon v Martinez, 84 NY2d 83 [1994]). To state a claim for negligence against a common carrier for injuries sustained due to the movement of a vehicle, the plaintiff must allege that the movement in question was a jerk or lurch that was "unusual and violent" (Grant v New York City Tr. Auth., 61 AD3d 422, 422 [1st Dept 2009] quoting Urquhart v. City of New York City Tr. Auth., 85 N.Y.2d 828 [1995]). Here, contrary to the City's characterization, the complaint's allegation "the boat jerked forward slamming into the Staten Island Dock and causing the plaintiff to fall into the window she was seated next to" (NYSCEF Doc. No. 14 [Compl. at ¶6 [emphasis added]]) satisfies this standard. Accordingly, the Court turns to that branch of the City's motion for summary judgment dismissing this action against it and now grants this branch of its motion.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. 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 NY2d 320, 324 [1986] [internal citations omitted]).

The City has made a prima facie showing of entitlement to judgment as a matter of law through the undisputed CCTV video footage from the Ferry. This footage clearly shows that the Ferry did not jerk or lurch in an unusual or violent manner at the time of plaintiff’s fall (See e.g., Atterbury v Metro. Transportation Auth., 180 AD3d 433, 434 [1st Dept 2020] [bus driver’s affidavit and video of the interior of the bus showed that the bus was pulling smoothly out of the bus stop and had reached a speed of three miles per hour, when plaintiff fell forward as he was sitting]; see also Holmes v New York City Tr. Auth., 166 AD3d 530 [1st Dept 2018]).

In opposition, plaintiff does not contest the accuracy of this video but instead relies upon her GML §50-h and EBT testimony to raise an issue of fact. Plaintiff’s subjective testimony as to the movement of the Ferry at the time of her fall is insufficient to do so—”[p]roof that the jerk was unusual or violent must consist of more than a mere characterization of the stop in those terms by the plaintiff” (Atterbury v Metro. Transportation Auth., 180 AD3d 433, 434 [1st Dept 2020] [internal citations omitted]; see also Holmes v New York City Tr. Auth., 166 AD3d 530 [1st Dept 2018]).

Accordingly, it is

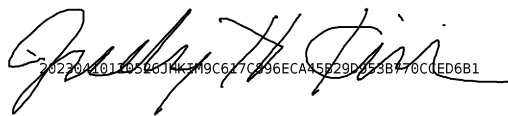
ORDERED that the City of New York and New York City Department of Transportation’s motion for summary judgment is granted and this action is hereby dismissed in its entirety; and it is further

ORDERED that counsel for the City of New York is directed to serve a copy of this decision and order, with notice of entry, upon plaintiff within fifteen days of the date of this decision and order; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E filing” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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4/10/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
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<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: