

Schneider v New York City Tr. Auth.

2023 NY Slip Op 33242(U)

September 18, 2023

Supreme Court, New York County

Docket Number: Index No. 152049/2022

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. 152049/2022

SCHNEIDER, RICHARD

MOTION SEQ. NO. 003

Plaintiff,

- v -

DECISION + ORDER ON MOTION

NEW YORK CITY TRANSIT AUTHORITY et al

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for

JUDGMENT - SUMMARY

For the reasons that follow, Defendant NEW YORK CITY TRANSIT AUTHORITY's (TRANSIT) motion seeking dismissal pursuant to CPLR §3211 and summary judgment pursuant to CPLR §3212 is granted and Plaintiff's opposition and cross-motion seeking summary judgment on the issue of liability is denied.

Background

Plaintiff alleges that on August 30, 2021, while a passenger on the TRANSIT bus as it was traveling along Broadway, at or near its intersection with West 106th Street in Manhattan, the bus driver made "a sudden lurching move" causing the Plaintiff to fall and sustain injuries (NYCSEF Doc. 50). Plaintiff then on March 8, 2022 commenced the instant negligence action against Defendant (NYCSEF Doc. 1)

Defendant now moves post note of issue for dismissal pursuant to CPLR §3211 and for summary judgment pursuant to CPLR §3212. Defendant alleges that it is not liable for Plaintiff's injuries. Plaintiff in opposition argues that the bus' stop was unusual and violent and thus Plaintiff is entitled to summary judgment on the issue of liability.

Discussion

As to TRANSIT's motion seeking both dismissal and summary judgment, in light of Plaintiff's opposition responding to TRANSIT's summary judgment arguments, this Court will treat Transit's motion as one seeking only summary judgment (*see* CPLR 3211[c]; CPLR 3212; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Wiesen v. New York Univ.*, 304 A.D.2d 459 [1st Dept 2003]).

In any action including a negligence action, any party moving for summary judgment has the high burden of establishing entitlement to judgment as a matter of law and dispelling any material questions of fact for a trial (CPLR 3212 [a]; *Andre v. Pomeroy*, 35 NY2d 361[1974]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Per the compliant, it is alleged that the Defendants were negligent because the bus made a "sudden, violent, unnecessary and unexpected stop". (NYSCEF Doc. 1, 38).

"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] *internal 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, 133 N.Y.S.3d 576 [1st Dept 2020]).

In support of its motion, TRANSIT relies primarily on the surveillance video from the subject bus (authenticated by a corresponding affidavit from Jazmin Orea, a Video Data Manager for Safefleet, which contracts with TRANSIT regarding bus videos and George Herrera, a Claims Manager for MBSTOA, NYSCEF Doc. 44, 45) and the bus driver, Pierre N. Cyriaque's deposition testimony and affidavit (NYSCEF Doc. 43, 46) to assert that the bus driver did not make an unusual and violent stop causing Plaintiff's injury. In support of the cross-motion, the Plaintiff relies upon the Plaintiff's deposition testimony, as well as the bus video (NYSCEF Doc. 42).

The video runs from approximately 3:00 p.m. to 3:30 p.m. on August 30, 2021 and depicts nine different camera angles from the interior and exterior of the subject bus. The footage also

provides a “map view” of the bus, it’s GPS information as well as its rate of speed. The footage depicts the bus traveling north on Broadway. At approximately 3:08:24 p.m. the bus comes to a stop at a designated bus stop just north of West 103rd Street. Passengers exit and board the bus. At approximately 3:08:56 p.m., the bus pulls away from the bus stop and continues northbound on Broadway. After the bus pulls away from the stop, at 3:09:10 p.m., the Plaintiff begins to stand up, and at 3:09:12 p.m., (cameras RTSP04 and IPCO3) he walks several steps towards the front of the bus. During this time, the bus’ highest rate of speed is 7 mph. As the bus approaches the intersection with 104th Street, there are several vehicles which appear to be at a stop at the intersection (Forward camera). The bus’ rate of speed from 3:09:17-3:09:22 p.m. appears to range between 0-1 mph. At approximately 3:09:21 p.m., as the bus is traveling at between 1-2 mph, the Plaintiff appears to be stepping backwards and at 3:09:24 p.m. he has fallen backwards, on to the floor of the bus. Between the time the bus leaves the bus stop, and the time the Plaintiff falls, the bus’ highest rate of speed is 7 mph.

In support of his cross-motion for summary judgment, the Plaintiff relies upon his deposition testimony describing that the bus made a “sudden lurching move” which caused the Plaintiff to lose his balance and fall backwards. The Plaintiff provides no admissible evidence establishing that the movement of the subject bus nothing more than those commonly experienced with city bus travel (*See Urquhart, supra*). Upon review, at no time does the footage appear to depict what the Plaintiff has characterized as a “sudden, violent, unnecessary and unexpected stop”. Significantly, the video does not depict any unexpected or sudden stops. The video does not show the bus operating an excessive speed under the prevailing traffic conditions. Nor does the video show any violent or unusual movements; the bus travels no more than 7 mph and does not veer out of its lane.

Moreover, the Plaintiff does not raise a material issue of fact regarding TRANSIT’s liability; liability cannot be based upon potential “breaches” of internal TRANSIT rules and regulations which hold TRANSIT to a higher standard of care than common law. (*See Williams v. New York City Transit Auth.*, 108 A.D.3d 403, 969 N.Y.S.2d 30 [1st Dept 2013]; *Karoon v. New York City Transit Auth.*, 286 A.D.2d 648, 730 N.Y.S.2d 331 [1st Dept 2001]).

Upon review, TRANSIT has met its *prima facie* burden as it has submitted evidence which demonstrates that TRANSIT has no liability for the subject accident because the bus did not come to a sudden, violent or abrupt stop and as the bus is shown to be traveling in a manner consistent

with regular city bus travel. The Plaintiff fails to establish that the bus operator was negligent and fails to raise a material issue of fact.

Accordingly, it is hereby

ORDERED that the Defendants' motion to dismiss and for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

ORDERED that the Defendants shall serve a copy of this 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); 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 the court's website).

9/18/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

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