

Esposito v New York City Tr. Auth.

2023 NY Slip Op 34834(U)

July 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 524067/2017

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the ___ day of ___ 2023.

JUL 1 2 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

-----X
NANCY ESPOSITO,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY D/B/A ACCESS A RIDE, EMPIRE PARATRANSIT CORP., EMPIRE PARATRANSIT CORP., D/B/A ACCESS A RIDE and JOHN/JANE DOE
Person intended being the operator of an Access A Ride Vehicle on or about March 13, 2017 between 2:00 p.m. and 3:15 p.m. in route from a food market located at 274 3661 Street to 18-14 Linden Street, Brooklyn, in the County of Kings, State of New York,

Defendants.

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The following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Defendant' Motion for Summary Judgment; Attorney Affirmation of Karl Zamurs, affirmed on August 24, 2020; Exhibits A-H.....	53-62
Plaintiff's Attorney Affirmation of Adam L. Shapiro in Opposition, affirmed on June 29, 2021; Exhibits A-F.....	72-78
Defendant' Attorney Affirmation of Karl Zamurs in Reply, affirmed on July 23, 2021...	79

Plaintiff commenced this action by filing a summons and complaint on December 14, 2017, alleging that she sustained personal injuries while she was a passenger in an Access-A-Ride vehicle on March 13, 2017. Specifically, plaintiff alleges that the bus was operated in a negligent manner and the driver stopped and/or turned suddenly, abruptly, and violently on two occasions without warning to the passengers. Defendants appeared by filing an answer on January 12, 2018. Defendants now move for summary judgment, arguing that the complaint must be dismissed because the plaintiff's characterizations of the bus's movements cannot establish an unusual or violent movement of the vehicle.

**DECISION
and
ORDER**

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Plaintiff testified at her examination before trial that there were two incidents in which the bus stopped abruptly and violently causing her injuries. The two incidents were about thirty (30) minutes apart. She testified that the bus was going fast, but she did not know the rate of speed, and that she held on to her seat and the handlebar because of how fast the bus was traveling. She stated that the bus stopped abruptly, causing plaintiff to go backward, forward, and sideways in her seat. Plaintiff alleges that her forehead and arm hit the window, her knee hit the chair in front of her, and her other knee hit the interior wall of the vehicle. She testified that she screamed out after the first incident.

With respect to the second incident, plaintiff again testified that she did not know the rate of speed the vehicle was traveling and alleges that the vehicle abruptly and violently stopped, causing her body to go forward, backwards, and sideways. Plaintiff stated that her head and arm hit the window, her left arm hit the seat, and her knees hit the seat in front of her. She was wearing her seatbelt, and at no time did plaintiff fall to floor. She was on her phone during the second incident and stated that the sudden stop made her drop her phone. There is no medical evidence of plaintiff's injuries or any doctor's affirmation regarding causation.

There were two other passengers on the bus. One passenger, Sandra Aviles Rodriguez, appeared for an examination before trial in this matter. Mrs. Rodriguez is partially blind in her left eye. She testified that she did not think the driver was driving recklessly and there was nothing unusual about the way the bus was operated. She did not recall any violent turns or swerving or hear any screeching brakes or horns during the ride. She further testified that she heard plaintiff complain about the driving, but she did not see plaintiff bang her head against the seat or window or hear plaintiff scream during the trip.

The bus driver, Edward Katz, also appeared for an examination before trial. He testified that, to the best of his recollection, the highest rate of speed of the vehicle was 25 M.P.H. Mr. Katz could not recall whether he made any sudden stops. He did not recall "jerking" the bus in any manner. He did not hear any passengers scream during the trip.

A motion for summary judgment requires a showing that the cause of action or defense demonstrates no triable issue of fact and therefor directs judgment in favor of any party as a matter of law is warranted. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 967, 520 N.E.2d 512 (Ct. of Ap. 1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 404 N.E.2d 718 (Ct. of Ap. 1980). On such a motion, the evidence will be construed in a light most favorable to the party against whom summary judgment is sought. *Spinelli v. Procassini*, 258 A.D.2d 577, 686 N.Y.S.2d 446 (2d Dep't 1999).

"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 establish that the movement consisted of a jerk or lurch that was 'unusual or violent[.]'" *Rayford v. Cnty. of Westchester*, 59 A.D.3d 508, 873 N.Y.S.2d 187 (2d Dep't 2009).

"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[.]" *Gioulis v. MTA Bus Co.*, 94 A.D.3d 811, 812, 941 N.Y.S.2d 689, 690 (2d Dep't 2012). "There must be 'objective evidence of the force of the

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stop 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.*

In *Rayford*, 59 A.D.3d at 508, 873 N.Y.S.2d at 187, the Second Department found that the plaintiff’s testimony that she “was merely caused to land on the steps next to where she had been standing, was not, in itself, sufficient to provide the objective support necessary to demonstrate that the movement of the bus was ‘unusual or violent[.]’ ”

Similarly, the Second Department in *Golub v. New York City Transit Auth.*, 40 A.D.3d 581, 582, 836 N.Y.S.2d 197 (2d Dep’t 2007) found the plaintiff’s testimony insufficient to establish that the vehicle’s movements were of a different class than the jerks and jolts commonly experienced in city bus travel where the plaintiff testified that she landed on the floor in front of her seat due to the vehicle’s movements. The Court in *Golub* granted the defendants’ motion for summary judgment, noting that the plaintiff was unable to estimate the speed at which the bus was traveling at the time of the occurrence, and further testified that no other passengers, whether seated or standing, were caused to fall.

Conversely, in *Black v. Cnty. of Dutchess*, 87 A.D.3d 1097, 1098–99, 930 N.Y.S.2d 64 (2d Dep’t 2011), the Second Department held that the plaintiff raised a triable issue of fact as to whether the movement of the vehicle at issue was unusual and violent. In *Black*,

[t]he plaintiff testified that, prior to the bus stopping, the bus appeared to her to be trying to “out beat” a car in the parking lot in which it was traveling. She further asserted that the bus was traveling “pretty fast,” although she could not quantify a speed. She further recalled that [the bus driver] slammed on the brakes, which caused her entire body to come off her seat and into the metal partition and pole directly in front of her seat, causing injuries to, inter alia, her right knee. [The bus driver] admitted at his deposition that he braked “hard” to avoid a collision with a car in the parking lot, and that the car he was trying to avoid had the right-of-way.

Here, the facts are more analogues to those in *Rayford v. Cnty. of Westchester* and *Golub v. New York City Transit Auth.* Plaintiff did not know the rate of speed the vehicle was traveling, she did not fall out of her seat, and no other passengers were injured or testified that the vehicle was operated in a violent or extraordinary manner. The passenger who testified said there was nothing unusual about the ride and that she did not recall any violent movements. While the bus driver did not recall much from the drive, he did not admit that he braked hard to avoid a collision like the bus driver in *Black v. Cnty. of Dutchess*, or provide any other testimony that would defeat defendants’ motion for summary judgment. Accordingly, plaintiff’s testimony, in itself, is insufficient to provide the objective support necessary to demonstrate that the movements of the bus were unusual or violent, and of a different class than the jerks and jolts commonly experienced in city bus travel. *Rayford v. Cnty. of Westchester*, 59 A.D.3d 508, 873 N.Y.S.2d 187 (2d Dep’t 2009).

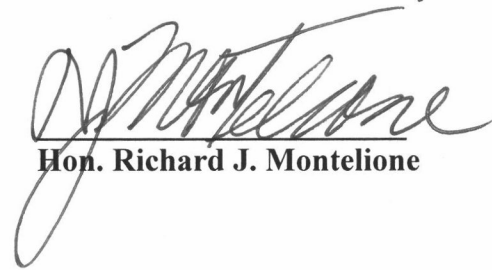
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Based on the foregoing it is,

ORDERED that defendant's motion for summary judgment is **GRANTED** and the case is dismissed.

This constitutes the decision and order of the Court.

ENTER



Hon. Richard J. Montelione

KINGS COUNTY CLERK
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