

Trapote-Igneri v New York City Tr. Auth.

2024 NY Slip Op 30315(U)

January 24, 2024

Supreme Court, New York County

Docket Number: Index No. 450422/2018

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. 450422/2018
ODALYS TRAPOTE-IGNERI, MARK IGNERI MOTION SEQ. NO. 002

ODALYS TRAPOTE-IGNERI, MARK IGNERI
Plaintiff

- v -

THE NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75

were read on this motion to/for SUMMARY JUDGMENT.

Upon review of the above listed documents, the motion for summary judgment by Defendant NEW YORK CITY TRANSIT AUTHORITY (Transit) is granted.

Background

This personal injury matter concerns a November 10, 2016 incident that occurred as Plaintiff was disembarking Defendants' public express bus, X-17, at about 6:15 a.m. at the Church Street and Chambers Street bus stop in Manhattan. Plaintiff specifically alleges sustaining injuries based on the bus driver's negligence in stopping too far from the curb and failing to lower or "kneel" the bus resulting in Plaintiff's fall from the bottom of the bus landing.

TRANSIT now moves again, post-note of issue for summary judgment pursuant to CPLR 3212 and for dismissal for failure to state a cause of action pursuant to CPLR 3211. Since the motion was duly noticed as one for summary judgment, filed post-note of issue, and Plaintiff opposes it as a summary judgment one, it will be treated as only seeking the relief of summary judgment (*see* CPLR §3211(c); *Wiesen v. New York Univ.*, 304 AD2d 459 [1st Dept 2003]).

Transit primarily argues that it cannot be found negligent for Plaintiff's accident because the bus operator did not have a duty to lower or "kneel" the bus. Plaintiffs oppose.

Discussion

Pursuant to CPLR 3212 any party in any action, including in a negligence action may move for summary judgment (CPLR §3212 [a], *Andre v. Pomeroy*, 35 NY2d 361 [1974]). However, the moving party has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form that dispels any material questions of fact requiring a trial (*see* CPLR 3212, *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986], *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Once the burden is met, opposing papers will be considered (*Alvarez*, 68 NY2d 320).

Regarding common carriers such as Transit, bus drivers have a duty to afford all passengers a safe place and means to disembark, however it is not per se negligence on the part of Transit nor does it raise a material question of fact when a bus operator stops away from the curb and does not lower the bus or "kneels the bus" as it is referred (*see Trainer v. City of NY*, 41 AD3d 202 [1st Dept 2007], citing *Blye v. Manhattan & Bronx Surface Tr. Operating Auth.*, 124 AD2d 106 [1st Dept 1987], *affd.* 72 NY2d 888 [1988]; *Archer v. NYC Transit Auth.*, 187 AD3d 564 [1st Dept 2020]).

Here in support of the instant motion, Transit submits the statutory hearing testimony of Plaintiff, and the deposition testimonies of Plaintiff and a Transit employee. At Plaintiff's statutory hearing, approximately four months after her accident, Plaintiff testified that she did not ask the bus operator to kneel the bus prior to exiting. She further testified that she did not know how far the bus door was from the curb at the time she exited and did not notice any potholes in the roadway. Plaintiff further testified that she stumbled when she put her foot down, causing her to fall. Further Plaintiff was not using a walking device such as cane or walker at the time she was exiting the bus.

During Plaintiff's June 4, 2019 deposition, over a year and a half after her accident, she testified that on the day of the accident she fell as she was exiting the bus she took every day and that it wasn't raining or snowing that day. She further testified that disembarking was never at the corner of

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Church Street and Chambers Street, rather the stop was in the middle of the block on Church Street. On the day of the accident there was a parked truck to the rear as the bus pulled in. She further testified that the bus driver pulled in far from the curb about six feet away. But nothing was blocking the exit. Notably on the day of the accident after she fell the bus driver asked her if she wanted an ambulance and she said no to any medical attention. In addition, Plaintiff testified about a medical condition causing her to fall. According to Plaintiff, about 3 months after this accident, Plaintiff fell in her home by losing her balance due to a medical condition of seizures.

Transit also submitted the deposition testimony of one of its superintendents. According to Mr. Soto he has been employed for Transit for over 21 years. He started as a bus driver in 1999 and now works training new bus drivers. He further testified that kneeling a bus meanings dropping the suspension of the front of the bus so that it is closer to the ground. He further testified that bus drivers do not have any mandatory timeframe for kneeling a bus. It is usually done on request by an elderly person or when someone is using a cane or a walker.

Upon review, Plaintiff's testimony provides sufficient evidence that Plaintiff did not request the bus to be kneeled, nor that she was using a walking devise or needed assistance. Further Plaintiff's own testimony establishes that the bus stopped at a designated bus stop but could not pull up immediately adjacent to the curb due to a truck parked in the designated bus stop. However, her exit was not blocked by the truck. Neither did Plaintiff testify that there were potholes or other defects on the road. Accordingly, even without the bus driver's testimony, Transit, with Plaintiff's testimony has provided sufficient evidence to establish Transit prima facia case dispelling any material questions of fact that Transit was negligent in failing to provide a safe area for Plaintiff to disembark even if it wasn't closest to the curb.

In opposition, Plaintiff argues that Transit has not met its burden since it did not provide the deposition testimony of the bus driver. Plaintiff further argues in the attorney affirmation that issues regarding Transit's liability exist because the bus operator did not provide Plaintiff with a safe place

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to exit since the disembarking wasn't at the curb but instead in the middle of the street. The attorney affirmation further argues that without the bus driver's testimony, issues of fact exist as to whether the truck was blocking the front or rear exit of the bus and the driving discretion exercised by the bus driver. Plaintiff also submitted Google photos of the subject area to argue that even with a truck parked at the corner, the bus could still fit in the designated stop and did not require the bus operator to stop far from away from the curb. Plaintiff also argues that Transit did not follow its own internal rules.

Upon review, Plaintiff's opposition does not raise material questions of fact with admissible evidence requiring denial of the summary judgment motion. It is well established that an attorney affirmation is not evidence (see e.g. CPLR 3212, *Alvarez*, 68 NY2d 320). Moreover, while Transit did not submit the bus driver's testimony, Plaintiff's own testimony sufficiently established why the bus did not stop by closer to the curb. According to Plaintiff, part of the designated bus stop was blocked by a parked truck. Further Plaintiff's argument with the submitted photographs would require unnecessary speculation. As to the argument that Transit may be liable for failing to stop closer to the curb and to kneel the bus, the argument is immaterial since Transit only has a duty to provide a safe place for its passengers to exit (see *Trainer*, 41 AD3d 202; *Archer*, 187 AD3d 564). Finally, to the extent that Plaintiff argues that the operator did not follow its own rules of how many feet are allowed away from the curb, it has already been decided that Transit cannot be held liable for potential "breaches" of internal rules and regulations which hold Transit to a higher standard of care than common law (see *Williams v. New York City Transit Auth.*, 108 AD3d 403 [1st Dept 2013]; *Karoon v. New York City Transit Auth.*, 286 AD2d 648 [1st Dept 2001]).

Upon review, Transit has met its *prima facie* burden of entitlement to judgment as a matter of law and Plaintiff has not raised material questions of fact warranting a trial. Here Plaintiff's own testimony supports that Transit was not negligent in providing a safe place to exit even if it was several feet away from the curb. As per Plaintiff's testimony, part of the bus stop was blocked by non-Transit

Authority vehicle, the street was in proper repair and did not present an inherent hazard, and Plaintiff

did not request that the bus be lowered. On the contrary, Plaintiff's deposition testimony raises questions that Plaintiff's fall may have been caused by her own medical condition. Accordingly, the motion is granted.

It is hereby

ORDERED that Defendant NEW YORK CITY TRANSIT AUTHORITY's motion to dismiss and for summary judgment is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor Defendant NEW YORK CITY TRANSIT AUTHORITY, dismissing the claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that within 20 days from the entry of this order, Defendant NEW YORK CITY TRANSIT AUTHORITY shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court in accordance with e-filing procedures.

1/24/2024
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN


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

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE