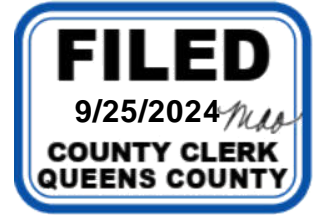


Flores v New York City Tr. Auth.
2024 NY Slip Op 35031(U)
September 24, 2024
Supreme Court, Queens County
Docket Number: Index No. 703303/2021
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN



-----X
FLORENCIO FLORES,

IAS Part 20

Plaintiff,

Index No.: 703303/2021

-against-

Motion Seq. No.: 1

NEW YORK CITY TRANSIT AUTHORITY,

Motion Date: 5.29.2024

Defendant.
-----X

Motion Cal. No.: 11

The papers listed by NYSCEF Doc. Nos. 17-35 were read on the motion filed by the defendant, New York City Transit Authority (the “Defendant”), for summary judgment.

The plaintiff, Florencio Flores (the “Plaintiff”), commenced this action seeking to recover damages for personal injuries allegedly sustained in an accident (the “Accident”). In essence, the Plaintiff, a passenger on bus owned and operated by the Defendant, alleges that the bus “accelerat[ed] at an unreasonable, rapid, unsafe, excessive and dangerous rate of speed,” causing him to slip and fall.

Presently before the Court is the Defendant’s motion for summary judgment dismissing the complaint. For the following reasons, the motion is granted.

I. Factual Background

The Accident occurred on December 2, 2019 on 150th Street at or near its intersection with 17th Avenue in Whitestone, New York. The Plaintiff was a passenger on a bus (the “Bus”) owned by the Defendant. The Bus was operated by Anthony Cucinella (“Cucinella”), an employee of the Defendant.

The Plaintiff testified under oath at a statutory hearing and at a deposition. The testimony relevant to this motion is set forth below.

The Plaintiff boarded the Bus via the front door at the stop located at 150th Street and 17th Avenue. Upon boarding, he paid the fare and began to walk towards the back of the Bus to look for a seat. After the Plaintiff took two or three steps, the Bus “took off quickly,” and he slipped and fell. He estimated that the Accident happened one or two minutes after he boarded the Bus.

Although the Plaintiff repeatedly stated that the Bus was going “fast” and that it “took off quickly,” his deposition testimony reveals that he does not know what caused him to fall:

Q. Can you tell me in your own words exactly how the accident occurred?

A Yes, I paid the bus I took the three steps and I slipped as soon as the bus took off, vroom, and that's when I fell.

Q Do you know what caused you to slip?

A I don't know. I don't know if it was like the way the bus took off when it took off. The floor being wet or I don't know. I don't know.

[emphasis added].

It was raining on the day of the Accident, and the floor of the bus was wet. The Plaintiff was not holding onto anything when he fell. Although there were other passengers on the bus, none of them fell. The Plaintiff is unable to estimate the speed of the Bus at the time it “took off.”

Cucinella testified at his deposition: that on the day of the Accident, he was operating the Bus as an employee of the Defendant on the Q15 route; that he picked up two passengers at the bus stop located at 150th Street and 17th Avenue; that there were about ten passengers on the Bus; that the Plaintiff was the only one that was not seated; that, after the Plaintiff and his friend boarded the Bus, he waited for them to pass the first row of seats before starting to drive; that he drove up to a stop sign about thirty-five feet away; that his speed never exceeded ten miles per hour; that when he stopped at the stop sign, he looked in the mirror and saw that the Plaintiff had fallen; that the Plaintiff was able to get up by himself; and that the Plaintiff never spoke to him about the Accident.

II. Discussion

The familiar principles applicable to summary judgment motions are set forth below.

“Summary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law” (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

The “function of summary judgment is issue finding, not issue determination” (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the “drastic” remedy of summary judgment, the movant “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 from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

The Defendant's motion is granted for two separate and independent reasons.

First, the Plaintiff's deposition testimony establishes that he "was unable to identify the cause of his fall without engaging in speculation" (*Osmolska v Giuseppa Morreale Family Trust*, 230 AD3d 594, 595 [2d Dept 2024] [citations omitted]). Here, as noted, the Plaintiff admitted at his deposition that he did not know what caused him to slip and fall, stating: "I don't know. I don't know if it was like the way the bus took off when it took off. The floor being wet or I don't know. I don't know." The Court notes that the Plaintiff's theory of liability is predicated upon the alleged sudden movement of the bus, not the condition of the floor of the bus. The Plaintiff's inability to identify the cause of his slip and fall is fatal to his action (*see id.*; *see also Sanchez-Trujillo v Beach 119, LLC*, 225 AD3d 726 [2d Dept 2024]; *Buckstine v Schor*, 213 AD3d 730, 731 [2d Dept 2023]); *Hahn v Go Go Bus Tours, Inc.*, 144 AD3d 748 [2d Dept 2016]).

Second, even if the Plaintiff established that the movement of the Bus caused the Accident, which he does not, the Defendant is entitled to summary judgment because the Plaintiff fails to establish that the movement of the Bus was violent or unusual. Here, the case of *Magloire v MTA Bus Company*, 222 AD3d 963, 963-964 [2d Dept 2023], is controlling:

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 demonstrate that the movement was unusual and violent, rather than merely one of the sort of jerks and jolts commonly experienced in city bus travel. Objective evidence of the force of the movement is needed, and the plaintiff's mere characterization of the movement as unusual and violent is insufficient. In seeking summary judgment in its favor, a common carrier has the burden of establishing, *prima facie*, that the movement of its vehicle was not unusual and violent [internal quotation marks and citations omitted]).

The Plaintiff presents no evidence that the movement of the bus was unusual or violent. Among other things, his deposition testimony reveals that he did not know the speed of the Bus when it "took off." Furthermore, the Plaintiff is the only person that fell. The case of *Orji v MTA Bus Company*, 204 AD3d 1027, 1029 [2d Dept 2022], is directly on point with the facts and the law: "[a]ccording to the plaintiff, who did not provide an estimate as to how fast the bus was traveling prior to stopping at the intersection, she was the only passenger on the bus who fell, although there was another passenger standing within two feet of her at the time ... This is not, in itself, sufficient to provide the objective support necessary to demonstrate that the movement of the bus was unusual and violent, and of a different class than the jerks and jolts commonly experienced in city bus travel" [citations omitted]).

In sum, this action is dismissed on the grounds: (1) that the Plaintiff is unable to identify the cause of his slip and fall; and (2) that, in any event, there is no objective evidence that the movement of the Bus was violent or unusual.

III. Conclusion

For the reasons stated above, it is hereby:

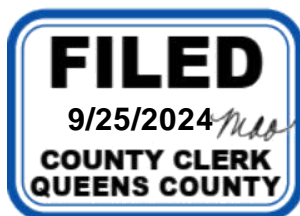
ORDERED, that the Defendant's motion for summary judgment is granted and that the complaint is dismissed; and it is further,

ORDERED, that the Defendant shall serve a copy of this Order with Notice of Entry on the Plaintiff via NYSCEF by October 24, 2024.

ORDERED, that the Clerk of the Court shall: (1) mark this cause disposed upon the grant of summary judgment in the Defendant's favor; (2) close all appearances; and (3) close all motions.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
September 24, 2024





MOJGAN C. LANCMAN, J.S.C.