

Wheat v New York City Tr. Auth.

2025 NY Slip Op 30474(U)

February 6, 2025

Supreme Court, New York County

Docket Number: Index No. 153233/2022

Judge: Richard Tsai

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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. RICHARD TSAI PART 21

Justice

-----X

BRENDA WHEAT,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY and
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY,

Defendants.

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INDEX NO. 153233/2022

MOTION DATE 08/29/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9-30
were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is hereby ORDERED that the motion for
summary judgment by defendants New York City Transit Authority and Manhattan and
Bronx Surface Transit Operating Authority, is GRANTED, and the complaint is
dismissed in its entirety, with costs and disbursements to said defendants, as taxed by
the Clerk, upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment in said defendants' favor
accordingly; and it is further

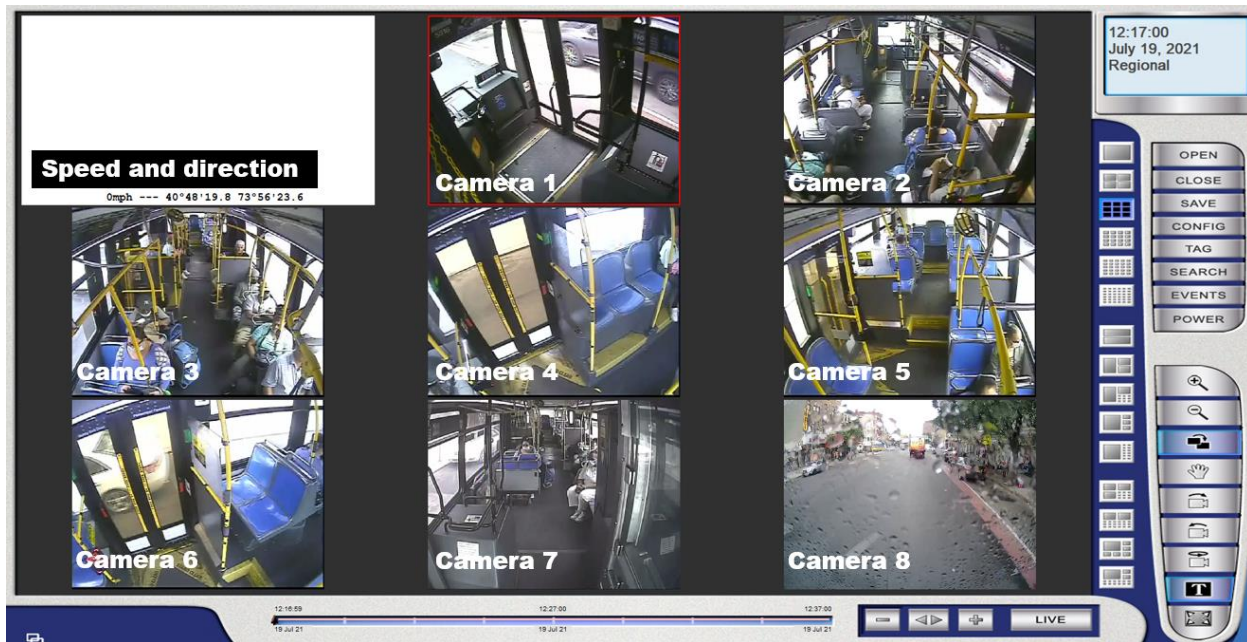
ORDERED that, within 60 days after entry of this decision and order, counsel for
defendants is directed to retrieve the compact disc containing the video footage from
IAS Part 21, 80 Centre Street Room 280 and to preserve the video footage intact
pending the outcome of any appeal of this decision and order, or if no appeal is taken,
until after the time to appeal from this decision and order has expired.1

In this action, plaintiff alleges that, on July 19, 2021, she was a bus passenger
who suffered injuries "when the bus operator suddenly and violently swerved and
stopped the bus which cause plaintiff [to be] thrown to the bus floor" (see Defendants'
Exhibit B in support of motion, complaint ¶ 22 [NYSCEF Doc. No. 15]). Defendants now
move for summary judgment dismissing the complaint, on the ground that the
movement of the bus was neither unusual nor violent. Plaintiff opposes the motion.

1 The video footage was provided on a compact disc by counsel for defendants. If the compact
drive is not retrieved within 60 days after entry of this decision, court staff may discard the
compact drive thereafter.

In support of their motion, defendants submitted time-stamped video footage from the bus that captures plaintiff's fall (Defendants' exhibit E in support of motion [NYSCEF Doc. No. 19], affirmation and video footage). The video contains footage from eight different bus cameras and provides data regarding the speed and direction of the bus. The footage begins at 12:16:59 hrs and ends at 12:37:00 hrs on July 19, 2021. Plaintiff's fall occurs at 12:23:26.

Because the different camera views are not labeled on the video footage, the Court has designated the cameras for ease of reference, as detailed in the screen shot below:



This video footage establishes the following:

- 12:17:00 Cameras 2 and 7 show plaintiff is seated on the bus.
- 12:17:52 Camera 1 shows a passenger with a shopping cart board the bus.
- 12:18:05 Cameras 2 and 7 shows the passenger with the shopping cart sitting down in a seat beside plaintiff.
- 12:23:07 Camera 8 shows the bus is stopped in traffic after driver completed maneuver into the left lane.
- 12:23:14 Camera 8 shows bus beginning to move.

- 12:23:19 Camera 8 shows the bus travelling in the left lane and a white van – which is stopped – is visible ahead in the right bus lane. The bus is travelling at 7 mph.
- 12:23:20 Camera 8 shows the bus travelling in the left lane and a white van – which is stopped – is visible ahead in the right bus lane. The bus is travelling at 9 mph.
- 12:23:22 Camera 8 shows the bus travelling in the left lane and a white van – which is stopped – is visible ahead in the right bus lane. The bus is travelling at 8 mph.
- 12:23:23 Camera 8 shows the bus travelling in the left lane and a white van – which begins to move slowly into the left lane – is visible ahead. The bus is travelling at 6 mph. Cameras 2 and 7 show the plaintiff standing up from her seat.
- 12:23:24 Camera 8 shows that the front of the white van has crossed into the bus's lane of travel, and the left rear tire of the van has crossed the lane divider.
- 12:23:25 Camera 8 shows the bus travelling in the left lane and a white van – which continues to move slowly into the left lane – is visible ahead. The bus is travelling at 5 mph and then 4 mph. Cameras 2 and 7 show plaintiff is standing in the middle of the bus with both arms stretched out and not holding on to anything.
- 12:23:26 Camera 8 shows the bus travelling in the left lane and a white van – which is slightly in the left lane – is visible ahead. The bus is travelling at 4 mph. Cameras 2 and 7 show the plaintiff beginning to fall, grabbing on to the shopping cart before landing on her back on the ground. Cameras 2 and 3 show four other passengers on the bus - none of whom jerk or jolt forward.
- 12:23:27 Camera 8 shows the bus stopped in the left lane and the white van reverses into the bus lane. Cameras 2 and 7 show the plaintiff lying on the ground.

Based on this video footage, defendants have met their prima facie burden of summary judgment, by “demonstrat[ing] that the movement of the bus was not ‘unusual or violent’ or of a class different from ‘the jerks and jolts commonly experienced in city bus travel’” (*Jimenez v New York City Tr. Auth.*, 221 AD3d 674, 675-76 [2d Dept 2023], quoting *Urquhart v New York City Tr. Auth.*, 85 NY2d 828, 830 [1995]; see also *Atterbury v Metropolitan Transp. Auth.*, 180 AD3d 433, 433-34 [1st Dept 2020] [affirming summary judgment in favor of defendants where the video footage “shows that the bus was pulling smoothly out of the bus stop and had reached a speed of 3 miles per hour, when plaintiff fell forward as he was sitting”]).

Notably, plaintiff stood up from her seat while the bus was travelling at 6 mph. When the bus slowed to 5 mph two seconds later, plaintiff was standing in the middle of the bus with her arms outstretched. When the bus slowed to 4 mph, plaintiff fell to the floor of the bus. The bus operator – over the course of seven seconds – slowed from 9 mph to 0 mph in anticipation of a possible obstruction ahead. This was not an unusual or violent movement, and the video footage of the other four passengers on the bus did not show that they were caused to fall (see *Golub v New York City Tr. Auth.*, 40 AD3d 581, 582 [2d Dept 2007]).

In opposition to this motion, plaintiff argues that defendants “have only produced their version of events” and did not demonstrate that plaintiff’s position “is not contrary to their own” (affirmation in opposition [NYSCEF Doc. No. 23] ¶ 25). Further, plaintiff claims that “there is a question of fact as to whether the bus stopped in a sudden, unusual and violent manner, which was clearly stated to have been so by the Plaintiff in the statutory hearing” (*id.*). At her statutory hearing, plaintiff stated that “[t]he bus jerked. It was - it happened so fast. I can’t even remember. All I know is that I was out” (Defendants’ exhibit C [NYSCEF Doc. No. 17], plaintiff’s statutory hearing transcript, at 19, lines 1-7). Plaintiff argues that the bus operator’s maneuver (swerve and stop) to avoid the other vehicle caused plaintiff to lose her balance. Lastly, plaintiff argues that her age (77 years old at the time of accident) is a factor relevant to the Court’s determination of this motion.

These arguments are unavailing.

Defendants met their prima facie burden “by submitting, among other things, the bus camera video footage of the subject incident” (*Park v New York City Tr. Auth.*, 2024 NY Slip Op 05334 [2d Dept Oct. 30, 2024]). Defendants were not required to disprove plaintiff’s version of the incident to meet their prima facie burden.

“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*, 85 NY2d at 830). In any event, plaintiff’s testimony that the bus jerked “is contradicted by the video footage” and therefore insufficient to defeat defendants’ motion (*Miranda v Century Waste Services, LLC*, 210 AD3d 590, 591 [1st Dept 2022]; see also *Kanuteh v New York City Tr. Auth.*, 231 AD3d 540 [1st Dept 2024]).

To the extent that plaintiff argues that the bus operator’s maneuver (which was not otherwise unusual or violent) had caused plaintiff to lose her balance, the court agrees with defendants’ argument that the emergency doctrine applies.

The emergency doctrine

“recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the

actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency” (*Caristo v Sanzone*, 96 NY2d 172, 174 [2001] [internal citations and quotation marks omitted]).

“[W]hile it is often a jury question whether a person’s reaction to an emergency was reasonable, summary resolution is possible when the individual presents sufficient evidence to support the reasonableness of his or her actions and there is no opposing evidentiary showing sufficient to raise a legitimate issue of fact on the issue” (*Castillo v New York City Tr. Auth.*, 188 AD3d 484, 486 [1st Dept 2020] [internal quotation marks, emendation and citations omitted])

Here, video footage established that the white van moved into the bus’s lane of travel two seconds after the plaintiff stood up and continued to move into the bus’s lane. The bus operator’s actions in stopping to avoid imminent contact with the white van was reasonable (*see Febres v Metropolitan Transp. Auth.*, 220 AD3d 462, 462 [1st Dept 2023]; *Santana v Metropolitan Transp. Co.*, 170 AD3d 551 [2019]; *Orsos v Hudson Tr. Corp.*, 111 AD3d 561 [2013]). Swerving the bus into the oncoming traffic lane was not required under the circumstances given the cars that were traveling in that lane at the relevant time (*see* Camera 8 bus footage from 12:23: 17hrs to 12:23:24).

Lastly, plaintiff cites no authority for the proposition that plaintiff’s age should be a factor as to whether a stop should be considered violent or unusual, as to whether the bus operator was faced with an emergency not of his own making, or whether the bus operator could have avoided a collision by taking a different action other than applying the brakes.



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<u>2/6/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE