

Rodriguez v New York City Tr. Auth.

2025 NY Slip Op 32836(U)

August 13, 2025

Supreme Court, New York County

Docket Number: Index No. 160842/2018

Judge: Richard Tsai

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI PART 21

Justice

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FREDY RODRIGUEZ

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

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INDEX NO. 160842/2018

MOTION DATE 07/08/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 21-49 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is **ORDERED** that defendant’s motion for summary judgment dismissing the complaint is **DENIED**.

According to the complaint, on March 19, 2018 at approximately 9:06 a.m., plaintiff suffered personal injuries when her left foot and leg got caught while stepping onto an M3 bus, bus number 6365, at St. Nicholas Avenue between 173rd Street and 174th Street in Manhattan (see defendant’s Exhibit B in support of mot, complaint ¶¶ 7,14 [NYSCEF Doc. No. 28]). Plaintiff alleges that the bus operator did not lower the bus appropriately (*id.* ¶ 7).

Defendant now moves for summary judgment dismissing the complaint on the ground that it had no duty to lower the bus. Plaintiff opposes the motion.

BACKGROUND

At her statutory hearing, plaintiff testified through a Spanish interpreter that she speaks a little bit of English (defendant’s exhibit F in support of mot, statutory hearing tr at 21, lines 15-18). According to plaintiff, on March 19, 2018,

“I was ready to enter the bus. So, the bus, usually they just stop a little bit farther from the sidewalk. So, I was waiting for the bus to put down the platform because I didn't see - so he didn't put down the platform. So I was like that (indicating) that I put my leg like this.

Q: Like what?

A: So, when I lifted my left leg, I hit myself - with the edge of the platform because he never put the platform down” (defendant’s exhibit F in support

of mot, statutory hearing tr at 17, line 25; at 20, lines 6-13 [NYSCEF Doc. No. 32]).

At her deposition, plaintiff stated that she gave signals to the bus operator to lower the bus. She testified as follows:

“But as I was trying to board the bus, I gave signals to the bus operator, trying to lower the platform of the bus for me to enter. And he didn't do it.

Q. How did you signal the bus operator?

A. I did this -- this movement with my hand asking him to move the floor (indicating).

Q. Is that with your left hand or your right hand?

A. The right hand.

Q. Were you carrying anything in your hands at the time?

A. No.

Q. When you made the gesture with your right hand, did the bus operator respond in any way?

A. No. He didn't do anything.

Q. When you were waiting for the bus to open the doors, did you keep that bus under constant observation?

A. When I was going to enter the bus, I gave him those signals asking him to lower the platform. And he didn't do it.

Q. Are you certain that the bus was not lowered or kneeled before you started to enter the bus?

A. Yes. I'm sure it wasn't lowered, and that's why I asked him to lower it for me. Because I tried to go up and I couldn't. And then I had to put so much effort to get into the bus, and that's when I fell. And I fell with my foot and I fell forward” (defendant's exhibit G in support of motion, plaintiff's EBT at 25, line 19 through 27, line 2 [NYSCEF Doc. No. 33]; see *a/so* plaintiff's exhibit A in opposition to mot [NYSCEF Doc. No. 37]).

Plaintiff further stated,

“I stood in front of the door of the bus, and I asked the bus to lower the floor. I signalled him to lower the floor. And he didn't do it, and then I tried to go onto the bus. And that's when I hit the edge of the bus. And I fell, and I fell inside the bus forward behind -- and I fell behind the seat.

Q. Was there any cause of this incident aside from the bus operator's failure to lower the bus?

A. No. Because it was because he didn't lower the floor that I hit the floor and 14 I fell" (*id.* at 28, lines 2-14).

At his deposition, Steven Jones, the bus operator, testified that he had did not recall an incident with an individual being injured while stepping onto a bus that he was operating on March 19, 2018 (see defendant's exhibit H in support of mot, Jones EBT at 21, lines 18-23 [NYSCEF Doc. No. 34]; see *also* plaintiff's exhibit B in opposition [NYSCEF Doc. No. 38]). However, when was asked about how he communicated with non-English speakers, Jones testified as follows:

"Q. Okay. Now have you had occasion to have passengers that don't speak English on your bus?

A Yes.

Q Okay. Do you speak any other languages other than English?

A No.

Q Okay. Do you know of any examples in your experience, in your 34 years -- if you had a passenger that could not communicate to you in English and, you know, was requesting either the wheelchair lift or the kneeler, how -- they would let you know that they 14 needed that assistance?

A Sometimes people on -- other people on the bus can speak the language. They may -- and they may intervene or interact with the person and ask them what it is that they -- what it is they're saying.

Q Okay. And what if they didn't have another person? And have you ever had that instance occur?

A Yes

Q And what --

A Well, you -- yes.

Q What is an example as to how that person, they communicate to you, in your years of experience? If they didn't have anybody to intervene on their behalf?

A Well, somebody gets on the bus and they want it to be lower, they'll do like this; they'll say, 'Lower the bus.'

Q And you're indicating a hand gesture, correct?

A Uh-huh.

Q And you would lower the bus for them?

A Yeah.

Q Okay. And that's occurred in your years as a bus operator? You've had that occasion?

A Yes.

Q Okay. Has that -- in need of a kneeler or a wheelchair lift? How do you make that distinction?

A You ask.

Q And what does that ask you to do?

A Yeah. Then you do the same motion, like, 'Do you want the platform to go down?' And usually they respond in the same manner. They let you know, 'Yeah, could you bring the bus down?'

Q Okay. So you use hand gestures; correct?

A Uh-huh" (*id.* at 34, line 3 through 35, line 24).

DISCUSSION

"To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County*, —NY3d—2025 NY Slip Op 02263 [2025] [internal citations omitted]).

Defendant argues that it had no duty to lower the bus (affirmation of defendant's counsel in support of mot ¶¶ 6-15 [NYSCEF Doc. No. 23]). In opposition, plaintiff argues that defendant's motion should be denied because plaintiff had asked the driver to lower the bus.

"A common carrier does have a duty to afford departing passengers a safe place and means to alight" (*Trainer v City of New York*, 41 AD3d 202 [1st Dept 2007]). In the absence of any evidence that a bus passenger appears incapable of negotiating the distance, there is no duty to lower or kneel the bus (*id.*; *Archer v New York City Tr. Auth.*, 187 AD3d 564 [1st Dept 2020]; see *Sabella v City of New York*, 58 AD3d 712, 713 [2d Dept 2009] [no evidence that he plaintiff was disabled, a senior citizen, or had a stroller]). However, contrary to the argument of defendant's counsel, where there is evidence that the plaintiff appeared incapable of negotiating the height differential, an issue of fact arises as to whether the common carrier would owe a duty to kneel the bus, assuming that the bus was capable of kneeling (see *Atwell v New York City Tr. Auth.*, 94 AD3d 620 [1st Dept 2012]).

Here, plaintiff testified that she made hand signals to the driver to lower the bus, which, when viewed in the light most favorable to the non-movant, raises the reasonable inference that plaintiff was incapable of negotiating the distance. Thus,

issues of fact arises as to whether the driver understood the hand gestures, and whether defendant therefore owed a duty to kneel the bus for plaintiff.

The cases that defendant cites do not dictate a different result. As plaintiff's counsel points out, in *Saidoff v New York City Transit Authority* (105 AD3d 726 [2d Dept 2013]), and *Santiago v New York City Transit Authority* (69 AD3d 530 [1st Dept 2010]), the plaintiffs did not ask the driver to engage the kneeling device to lower the bus, and they did not appear unable to negotiate the height differential. Similarly, in *Kasper v Metropolitan Transp. Auth. Long Is. Bus* (90 AD3d 998 (2d Dept 2011), where the plaintiff was using a curb-to-curb paratransit bus service, the driver did not or should have known of any disability that required him to render additional assistance to the plaintiff, given that the plaintiff had not requested the driver's assistance.

Finally, *Carlino v Triboro Coach Corp.* (22 AD3d 624 [2d Dept 2005]) is inapplicable. There, the Appellate Division, Second Department affirmed the trial court's decision to grant the defendant's motion for a directed verdict at trial, at the close of the plaintiff's case, because there was no testimony establishing industry standards and generally-accepted practices regarding the lowering of a bus. However, on a motion for summary judgment, "[m]erely pointing to gaps in an opponent's evidence is insufficient to satisfy the movant's burden" (*Hairston v Liberty Behavioral Mgt. Corp.*, 157 AD3d 404, 405 [1st Dept 2018]). In any event, plaintiff testified that she made hand gestures to the bus driver to lower the bus.



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<u>8/13/2025</u>			<u>RICHARD TSAI, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE