

Licera v New York City Tr. Auth.

2025 NY Slip Op 32936(U)

August 4, 2025

Supreme Court, New York County

Docket Number: Index No. 451765/2023

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

-----X

LIDIA LICERA,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
M.T.A. BUS COMPANY, and JOHN DOE, Whose Identity Is
Unknown,

Defendants.

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INDEX NO. 451765/2023
MOTION DATE 05/07/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 32-58
were read on this motion to/for JUDGMENT - SUMMARY.

In this action, plaintiff alleges that, on March 8, 2022, she was injured when the
bus in which she was a passenger suddenly, unusually, and violently braked twice after
pulling away from a bus stop, causing plaintiff to be thrown to the floor.

Plaintiff now moves for summary judgment in her favor against defendants as to
liability and for summary judgment dismissing defendants' affirmative defenses as they
apply to comparative fault. Plaintiff also moves for sanctions against defendant, for
alleged spoliation of video footage of the incident. Defendants New York City Transit
Authority, Metropolitan Transportation Authority and MTA Bus Company (collectively,
the Transit Defendants) oppose the motion.

BACKGROUND

In an affidavit, plaintiff avers that, on March 8, 2022, at approximately 3:30 p.m.,
she and her niece were passengers on MTA Bus No. 6090, bearing New York State
license plate no. BC9794, on the Q53 bus route (see plaintiff's Exhibit 8 in support of
motion, aff of plaintiff ¶ 2 [NYSCEF Doc. No. 43]). Plaintiff states that she stood in the
open area bus the bus driver's seat, holding onto a vertical handrail, while her niece
was seated near the front of the bus (id. ¶ 5).

According to plaintiff, less than one minute after the leaving the bus stop, the
driver unexpectedly braked in a violent and abrupt manner twice (id. ¶ 7). Plaintiff lost
her grip and her balance when the bus first braked, and the second braking allegedly
caused plaintiff to be thrown to the ground (id. ¶ 8). Plaintiff claims that she lost

conscious for a few seconds, and suffered injuries to her left elbow, right shoulder, lumbar spine, cervical spine, and left knee (*id.* ¶ 12).

In an affidavit, plaintiff's avers that she was with plaintiff on the Q53 bus on March 8, 2022, traveling with her five-year-old son (aff of Iveen Soles Licera ¶¶ 2-4 [NYSCEF Doc. No. 44]). She states that she was seated towards the front of the bus (*id.* ¶ 6). According to Iveen Licera, the driver "suddenly and unusually hit the brakes extremely hard two times" (*id.* ¶ 7). She states that "multiple passengers on the bus screamed, and were thrown forward in their seats (*id.* ¶ 12). She observed her aunt "fall backwards next to the driver" (*id.* ¶ 11).

At her statutory hearing, plaintiff testified that no other standing passengers fell when the first stop occurred. According to plaintiff, she saw a girl "on the extreme opposite side" where plaintiff was, who did not fall when the bus stopped the first time (plaintiff's Exhibit 16 in support of motion, statutory hearing tr at 18, lines 18-25) [NYSCEF Doc. No. 51]). Plaintiff stated that the girl did not fall because she was leaning her back against something (*id.* at 18, line 25 through 19, line 2). When asked if anyone else fell after the bus braked a second time, plaintiff answered, "No" (*id.* at 20, lines 15-22 [NYSCEF Doc. No. 51]). When asked if anyone was thrown of their seats, plaintiff replied, "No, everyone was pushed forward and everybody screamed" (*id.* at 20, line 23 through 21 line 2).

Plaintiff testified that she did not request any medical attention after she fell (*id.* at 25, lines 23 through 2). When asked if anyone told the bus driver that plaintiff had fallen, plaintiff answered, "No" (*id.* at 24, lines 21-23). Plaintiff's niece also did not say anything to the bus driver before plaintiff got off the bus (*id.* at 26, lines 6-8).

The Transit Defendants have admitted that, on March 8, 2022, at or about 3:30-4:00 p.m. defendant MTA Bus Company was the owner of a bus bearing New York State license plate BC9794 (see plaintiff's Exhibit 1 in support of motion, complaint ¶ 21 [NYSCEF Doc. No. 36]; see *also* plaintiff's Exhibit 2 in support of motion, answer ¶ 3 [admitting allegations in paragraph 21] [NYSCEF Doc. No. 37]).

According to plaintiff's counsel, on March 14, 2022, they served the Transit Defendants with a "Notice to Preserve Video Surveillance/Electronic Evidence via certified mail (affirmation of plaintiff's counsel in support of motion ¶ 12 [NYSCEF Doc. No. 33]). The letter states, in relevant part:

Date of Incident: 3/08/2022

Dear SIR/MADAM:

This law firm represents Lidia Licera who was seriously injured while she was a passenger on a Q53 bus, Bus #: 6090 bearing New York State license plate number Metropolitan Transportation Authority, BC 97794, on Cross Bay Boulevard at 157th Avenue at approximately 2:30-5:00 p.m. Upon information and belief, you are in possession of video depicting the subject incident on March 8, 2022.

*****Please let this letter serve as notice that you are to immediately preserve that video recording and its contents, including any unedited footage and outtakes for future inspection.*****

Specifically, we are asking you to not destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or video relevant to this incident and you are further instructed to take reasonable efforts to preserve such data and/or evidence. To meet this burden, you are instructed by way of example and not limitation, to:

Preserve and retain all data in any format, media, or location relating to the video footage and/or surveillance from all cameras showing any portion of the incident on March 8, 2022, between 2:30 p.m. and 05:00 p.m., including but not limited to, data on hard drives, hard disks, floppy disks, zip drives, CD-ROMs, CD-RWs, DVDs, backup tapes, PDAs, cell phones, smart phones, memory cards/sticks, or digital copiers or facsimile machines.

(see plaintiff's Exhibit 10 in support of motion [NYSCEF Doc. No. 45]).

In a letter dated August 28, 2023, defendant MTA Bus Company responded:

Dear Counsel:

MTA Bus Company is in receipt of your request to preserve video.

Please be advised that MTA Bus Company cannot provide the video as it was overwritten during normal operation.

(see plaintiff's Exhibit 13 in support of motion [NYSCEF Doc. No. 48]).

DISCUSSION**I. The branch of plaintiff's motion for summary judgment in her favor as to liability against the Transit Defendants**

"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]).

To meet the prima facie burden for injuries sustained by a passenger on a bus when the vehicle comes to a halt, “the plaintiff must establish that the stop caused a jerk or lurch that was ‘unusual and violent.’ 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 v New York City Tr. Auth.*, 85 NY2d 828, 829-30 [1995] [internal citation omitted].) Plaintiff must provide “objective evidence of the force of the 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.* at 830; *Disalvatore v New York City Tr. Auth.*, 45 AD3d 402 [1st Dept 2007]; *Fonseca v Manhattan and Bronx Surface Tr. Operating Auth.*, 14 AD3d 397 [1st Dept 2005]).

Here, plaintiff’s submissions were not sufficient to meet plaintiff’s prima facie burden that the two allegedly sudden stops were unusual or violent, as such proof consisted of plaintiff’s and her niece’s characterization of the alleged stops. Plaintiff’s own fall “is not, in itself, sufficient to provide the requisite objective support necessary to demonstrate that the stop was ‘unusual and violent,’ of a ‘different class than the jerks and jolts commonly experienced in city bus travel’” (*Banfield v New York City Tr. Auth.*, 36 AD3d 732, 732-33 [2d Dept 2007], citing *Urquhart*, 85 NY2d at 830).

In any event, the Transit Defendants raised triable issues of fact as to whether the stops were unusual or violent.

The Transit Defendants point out that, at plaintiff’s statutory hearing, plaintiff testified that no one who was standing had fallen when the bus stopped the first time or the second time (statutory hearing tr at 18, lines 18-25; at 20, lines 15-22). Plaintiff also stated that no one else was thrown out of their seats (*id.* at 20, line 23 through 21 line 2). Viewing the evidence in the light most favorable to the non-movants, triable issues of fact arise as to whether the stops were unusual or violent (*see Mobley v New York City Tr. Auth.*, 190 AD3d 561, 562 [1st Dept 2021] [the fact that no other passenger on the bus fell; *Pfleshinger v Metropolitan Transp. Auth.*, 137 AD3d 516 [1st Dept 2016] [no other passengers who were standing fell when the bus stopped]; *see Golub v New York City Tr. Auth.*, 40 AD3d 581, 582 [2d Dept 2007] [no other passengers, whether seated or standing, were caused to fall]).

Summary judgment as to liability in plaintiff’s favor against the Transit Defendants is therefore denied.

Summary judgment dismissing the affirmative defenses as they apply to plaintiff’s comparative fault is granted.¹ Plaintiff testified that she was standing in an area where passengers are permitted to stand, and that she was holding a vertical

¹ The better practice would have been for plaintiff’s counsel to have specifically identified those affirmative defenses for which dismissal was sought. There are actually two defenses that bear on plaintiff’s comparative fault—the first affirmative defense of culpable conduct, and the eighth affirmative defense—failing and neglecting to exercise ordinary care in making timely use of the available lap/shoulder belt, railing, and/or infant safety device(s).

handrail when the first stop allegedly occurred. The Transit Defendants fail to raise a triable issue of fact as to plaintiff's comparative fault.

II. The branch of plaintiff's motion for sanctions against the Transit Defendants for spoliation of the bus video

"A party that seeks sanctions for spoliation of evidence must show that the party having control over the evidence possessed an obligation to preserve it at the time of its destruction, that the evidence was destroyed with a 'culpable state of mind,' and that the destroyed evidence was relevant to the party's claim or defense such that the trier of fact could find that the evidence would support that claim or defense. Where the evidence is determined to have been intentionally or wilfully destroyed, the relevancy of the destroyed documents is presumed. On the other hand, if the evidence is determined to have been negligently destroyed, the party seeking spoliation sanctions must establish that the destroyed documents were relevant to the party's claim or defense" (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547-48 [2015] [internal quotation marks and citations omitted]).

With regard to spoliation of electronically stored information—which is what the bus video footage is—it is well settled that once a party "reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents" (*VOOM HD Holdings LLC v EchoStar Satellite L.L.C.*, 93 AD3d 33, 36 [1st Dept 2012], quoting *Zubulake v UBS Warburg LLC*, 220 FRD 212 [SDNY 2003]). A party can be said to reasonably anticipate litigation, when it is "on notice of a credible probability that it will become involved in litigation" (*id.* at 43).

Here, plaintiff submits a preservation letter purportedly mailed on March 14, 2022 to the MTA Bus Company.²

Although the MTA Bus Company apparently acknowledged receipt of the preservation letter by letter dated August 28, 2023, the record before this court does not establish that the MTA Bus Company received the letter before the bus video had been deleted. According to an affidavit from John Paul Laquindanum, a Video Manager employed by SafeFleet, which maintains records of bus camera video relating to bus owned by the MTA Bus Company, the demand to preserve was served "more than 30 days after the alleged occurrence" (Laquindanum aff ¶ 4 [NYSCEF Doc. No. 55]).

As the Transit Defendants point out, there is no proof of mailing of the preservation letter upon the MTA Bus Company. The two return receipts of the mailings

² Because the MTA Bus Company admitted to ownership of the bus bearing license plate number BC9794, the court need not address the issue of spoliation as to the other defendants, which do not own the bus that purportedly had video footage.

and the tracking information from the United States Postal Service correspond to mailings to “MTA New York City Transit Authority” at 2 Broadway in Manhattan, and to “New York City Transit Authority” at 130 Livingston Street in Brooklyn, as reflected in the return receipts and the certified mail receipts (see plaintiff’s Exhibit 11 in support of motion [NYSCEF Doc. No. 46]). Plaintiff did not produce the return receipt or certified mail receipt for the letter addressed to the MTA Bus Company.

CONCLUSION & ORDER

Accordingly, it is hereby **ORDERED** that plaintiff’s motion is **GRANTED IN PART TO THE EXTENT THAT** the first affirmative defense of plaintiff’s culpable conduct and the eighth affirmative defense of failing to make timely use of an available lap/shoulder bet, railing and/or infant safety device in the answer of defendants New York City Transit Authority, Metropolitan Transportation Authority and MTA Bus Company are stricken, and the motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear in person for a preliminary conference on **October 16, 2025 at 3 p.m.** in IAS Part 21, 80 Centre Street Room 280, New York, NY 10013.



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8/4/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE