S

Short Form Order

**SUPREME COURT - STATE OF NEW YORK**
**TRIAL TERM, PART 11 NASSAU COUNTY**

**PRESENT:**

***Honorable Karen V. Murphy***
**Justice of the Supreme Court**

---x

**QI LIAO,**

**Plaintiff(s),**

**Index No. 288/10**

**Motion Submitted: 11/28/11**
**Motion Sequence: 001**

**-against-**

**METROPOLITAN TRANSPORTATION AUTHORITY LONG ISLAND BUS a/k/a MTA LONG ISLAND BUS and DAVID NEHREBECKI,**

**Defendant(s).**

---x

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....X
Answering Papers.....X
Reply.....X
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....

The defendants, Metropolitan Transportation Authority Long Island Bus a/k/a MTA Long Island Bus [hereinafter MTA] and David Nehrebecki, move pursuant to CPLR §3212, for an order granting summary judgment dismissing the plaintiff's complaint (Sequence #001).

On May 31, 2009, the plaintiff, along with her then 14 year old son and her then 7 year old daughter, were passengers on an MTA bus traveling between the Flushing terminal and the bus stop located just past the intersection at South Middle Neck Road and Susquehanna Road. On said date, the bus was operated by defendant, David Nehrebecki, an employee of MTA. The plaintiff alleges that after signaling the driver she wanted to exit at Susquehanna

Road, she immediately stood up adjacent to the front door of the bus and within "one to two seconds"[1] thereafter was caused to fall down when "the bus made a sharp stop" in front of a traffic light controlling the intersection. The plaintiff states that after she fell, her "head was on the lowest" of the steps leading into the bus, and her foot was on the highest.

The plaintiff claims that as a result of the subject accident, she sustained injuries to her head, neck, right hip and left shoulder and on January 7th, 2010 commenced the underlying action alleging that the named defendants were negligent it the operation of the bus.[2] The defendants' application for summary judgment dismissing the plaintiff's complaint thereafter ensued and is determined as set forth hereinafter.

In support of the instant application, counsel for the defendants posits that on the day in issue, the bus upon which the plaintiff was a passenger, was operated in a safe and non-negligent manner and any of the jolts experienced by Ms. Liao were of the type which ordinarily attend a bus stopping at an intersection (*see* Podhaskie Affirmation in Support at ¶¶24). Counsel relies, in part, upon that portion of the deposition testimony of David Nehrebecki wherein he stated that in the minutes just prior to subject accident, he was only traveling at approximately 25 miles per hour. Counsel further references the defendant's testimony whereby he stated when the traffic light controlling the intersection turned red, he began to "safely and slowly"bring the bus to a full stop.

In addition to the foregoing, counsel relies upon the testimony of non-party witness and fellow passenger, Maria Cortez, who, when asked if there was anything unusual about the way in which the driver stopped the bus, unequivocally answered "no."

In opposing the instant application, counsel for the plaintiff initially contends that there are triable issues of fact with respect to precisely how the subject accident occurred, thus warranting denial of the defendants' instant application (*see* Huang Affirmation in Opposition at ¶¶40,42, 48,49,50). To this point counsel posits that defendant Nehrebecki has provided two conflicting versions as to the happening of the subject accident. Specifically, counsel argues that while in the "Bus Operator Accident Report", defendant Nehrebecki stated the plaintiff "rang bell, . . . got up [and] walked to the front of bus [and] collapsed

---

[1] The Court notes that the plaintiff's original testimony reflects she initially stated that it was within "one to two minutes" after standing up that she was caused to fall. However, said testimony was thereafter corrected on the Errata Sheet indicating that "minutes" should have been "seconds" (*see* Podhaskie Affirmation in Support at Exh. D).

[2] The plaintiff's daughter also purportedly sustained injuries, yet never filed a claim in connection therewith (*see* Huang Affirmation in Opposition at Exh. A at p. 12).

when I safely stop[ped] the bus for a red light . . . ", he thereafter changed his account and testified the plaintiff fell down prior to the bus having stopped (***id.*** at ¶43).

Counsel additionally argues that the plaintiff's testimony adduced at both her deposition, as well as the 50-h hearing constitutes sufficient objective evidence that the stopping of the bus was "unusual and violent" and asserts that Ms. Cortez, "repeatedly stated that as a result of the bus stop, the Plaintiff and her daughter fell down" (***id.*** at ¶42,47).[3]

As stated above, the plaintiff claims that she was caused to fall and sustain serious injuries when the bus upon which she was a passenger made a sharp stop. "To establish a prima facie case of negligence against a common carrier for injuries sustained by a passenger when the vehicle comes to a halt, the plaintiff must establish that the stop caused a jerk or lurch that was 'unusual and violent' " (***Urquhart v. New York City Transit Authority***, 85 N.Y.2d 828, 647 N.E.2d 1346, 623 N.Y.S.2d 838 (1995) quoting ***Trudell v. New York R. T. Corp.***, 281 N.Y. 82, 22 N.E.2d 244 (1939); ***Black v. County of Duchess***, 87 A.D.3d 1097, 930 N.Y.S.2d 64 (2d Dept., 2011); ***Rayford v. County of Westchester***, 59 A.D.3d 508, 873 N.Y.S.2d 187 [2d Dept., 2009]). Moreover, "[p]roof that the stop was unusual or violent must consist of more that a mere characterization of the stop in those terms by the plaintiff" (***Urquhart v. New York City Transit Authority, supra*** at 830); ***Guadalupe v. New York City Transit Authority***, ___N.Y.S.2d ___, 2012WL 149524 [N.Y.A.D. 2d Dept.]. Once evidence has been provided establishing that the stop was unusual or violent, it becomes incumbent upon the carrier to come forth with credible evidence which explains the necessity for stopping the bus in such a manner (***Harris v. Manhattan and Bronx Surface Transit Operating Authority***, 138 A.D.2d 56, 529 N.Y.S.2d 290 [1st Dept 1988]).

In the instant matter, the Court finds that the defendants have demonstrated their entitlement to summary judgment by proffering competent evidence that the bus was operated in a non-negligent manner (***Alvarez v. Prospect Hospital***, 68 N.Y.2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986); ***Winegrad v. New York Univ. Med. Center***, 64 N.Y.2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 [1985]). The deposition testimony of defendant Nehrebecki that he "safely and slowly" brought the bus to full stop was fully corroborated by Ms. Cortez, who stated that there was nothing unusual about the manner in which the bus was brought to a stop (***id.***).

---

[3] The Court is compelled to note that in opposing the defendants' application, plaintiff's counsel provides and heavily relies upon two statements taken from Kevin and Joanna Yu, the plaintiff's two children, both of whom were also passengers on the bus. However, inasmuch as neither of these statements are in admissible form, the contents thereof were not considered (***Zuckerman v. City of New York***, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]).

In opposition to the defendant's *prima facie* showing, the plaintiff's testimony that the "bus made a sharp stop", standing alone, is insufficient to raise an issue of fact (***Urquhart v. New York City Transit Authority, supra***). "A common carrier is subject to the same duty of care as any other potential tortfeasor - reasonable care under all of the circumstances of the particular case" (***Bethel v. New York City Tr. Auth.***, 92 N.Y.2d 348, 703 N.E.2d 1214, 681 N.Y.S.2d 201 [1998]). In the matter *sub judice*, other than the plaintiff's characterization of the accident, there is no other competent evidence as to either the severity of the stop or any lack of reasonable care on the part of the defendants. As noted above, the two witness statements offered to corroborate plaintiff's testimony that the MTA bus made a "sharp stop", are not in admissible form and as such were not considered (***Zuckerman v. City of New York***, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]). Further, while counsel for the plaintiff plainly asserts that Ms. Cortez repeatedly testified the plaintiff fell down "as a result of the bus stop", such assertion is simply not supported by the record. Rather, a review of her deposition transcript reveals that on at least two occasions Ms. Cortez testified the plaintiff fell "[b]ecause she was standing" and "didn't wait for the bus to stop" prior to getting up.

Based upon the foregoing, the application interposed by the defendants, Metropolitan Transportation Authority Long Island Bus a/k/a MTA Long Island Bus and David Nehrebecki, for an order granting summary judgment dismissing the plaintiff's complaint, is hereby Granted.

The foregoing constitutes the Order of this Court.

Dated: January 26, 2012
Mineola, N.Y.

Karen V. Murphy
J. S. C.

ENTERED
JAN 30 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE