SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 3

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PAMELA MIKELL,

Plaintiff,

-against-

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

Defendant(s).

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DECISION/ORDER

Present:
HON. MITCHELL J. DANZIGER

Index No. : 23370/2014

Recitation as Required by CPLR §2219(a): The following papers were read on this Motion for Summary Judgment	Papers Numbered
Notice of Motion, Affirmation in Support with Exhibits.....	1
Affirmation and Affidavits in Opposition with Exhibits	2
Reply Affirmation in Support	3

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Defendants, NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (hereinafter, collectively referred to as "Transit"), move for summary judgment dismissing plaintiff's complaint pursuant to CPLR §3212. Plaintiff's complaint seeks damages for injuries sustained by her as a result of her fall on a bus owned and operated by Transit. Transit posits that summary judgment is appropriate since Transit did not breach a duty to plaintiff because the bus in which plaintiff was a passenger did not make a violent or unusual stop prior to plaintiff's fall. Consequently, Transit asserts it cannot be held liable for plaintiff's injuries as a matter of law. Defendant METROPOLITAN TRANSIT AUTHORITY (hereinafter, "MTA") seeks dismissal of the complaint on the grounds that it is not a proper party to this lawsuit.

Initially the court notes that plaintiff has not opposed the portion of the motion seeking dismissal of the complaint as against MTA. Indeed, the MTA is a separate and distinct legal entity

from the New York City Transit Authority. Here, there is no dispute that the bus upon which plaintiff was injured was not owned by MTA but was instead owned by Transit. Therefore, as a separate legal entity created pursuant to Public Authorities Law §1266 et. seq., the MTA cannot be liable to plaintiff (*Noonan v. Long Island R.R.*, 158 A.D.2d 392 [1st Dep't.,1990]; *Abrams v. New York City Trans. Auth.*, 48 A.D. 2d 69 [1st Dep't. 1975]). Consequently, the complaint is dismissed as against MTA.

Turning to the portion of the motion seeking summary judgment dismissing the complaint against Transit, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Once movant has met his initial burden on a motion for summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1st Dept. 1999]). When the existence of an issue of fact is even fairly debatable, summary judgment should be denied (*Stone v. Goodson*, 8 N.Y.2d 8, 12 [1960]).

To maintain a negligence cause of action, a plaintiff must be able to prove the existence of a duty, breach, and proximate cause (*Palsgraf v. Long Island R.R.Co.*, 248 N.Y., 339 [1928]). In order to establish a prima facie claim of negligence against a common carrier for injuries sustained by a passenger due to the movement of a bus stopping, the plaintiff must be able to establish that the stop caused a jerk or lurch that was "unusual and violent" (*Urquhart v. New City Tr. Auth.*, 85 N.Y.2d 828 [1995]. The evidence must establish that the movement of the vehicle was of, "a different class than the jerks and jolts commonly experienced in city bus travel" (*Golub v. New York*

City Tr. Auth., 40 A.D.3d 582 [2d Dep't., 2007]). Such evidence may consist of testimony by the plaintiff concerning the distance which she was propelled as a result of the stop as such testimony constitutes, "objective evidence of the force of the stop sufficient to establish an inference that the stop was extraordinary or violent" (*Urquhart* at 830).

In support of the motion, Transit relies solely on the testimony of plaintiff. Transit asserts that because plaintiff merely characterized the stop as "sudden," her allegations are insufficient, as a matter of law, to establish her prima facie entitlement to judgment. Transit offers no independent evidence to establish that there was no sudden stop, but instead, focuses on plaintiff's alleged shortcomings in proof. Indeed, the case law is clear that a sole, subjective characterization of the stop as sudden, violent, or unusual by the plaintiff is insufficient to defeat summary judgment. However, the court finds that plaintiff has offered more than this, and therefore, summary judgment is denied.

Here, plaintiff asserts that she has taken this same bus route over 5,000 times and that this stop was unlike any stop she experienced in the past. While being a frequent rider does not, in and of itself, make one an expert as to bus speeds, it at least adds some credence to a mere subjective "sudden stop" characterization. It also provides a basis and lends support to the claim that this stop was different from those stops common to city travel. Morever, the Accident Description Report created by New York City Transit Authority specifically recites that, "customer removed by EMS taken to hospital, fell from motion of the bus" (Ex. B to plaintiff's opposition). Further, plaintiff's daughter submits an affidavit also describing the stop as "very hard." Plaintiff's daughter testified that her mother landed, "about six feet away from where she was going to sit down" as a result of the stop. Therefore, sufficient objective evidence has been submitted to establish an inference that the stop was extraordinary (*Urquhart* at 830). While Transit claims that plaintiff fell right next to her seat, the daughter's affidavit raises an issue of fact as to the distance plaintiff was propelled as a result of the stop. On a motion for summary judgment, the non moving party is entitled to any favorable inferences that can be drawn from the evidence provided (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept. 1989]).

The court notes that the daughter's affidavit is of particular importance because, whether required to do so or not, Transit failed to take any witness statements from other passengers on the bus at the time of the accident. In fact, the record establishes that once the bus stopped to address

FILED: BRONX COUNTY CLERK 04/21/2017 02:06 PM INDEX NO. 23370/2014E
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plaintiff's injuries, Transit supervisors boarded and immediately ordered all passengers, including plaintiff's daughter, off of the bus. Plaintiff's daughter refused to leave plaintiff alone and, during that time, the other passengers apparently left the scene. Transit's contention that plaintiff was free to secure statements from the passengers is incredible and borders on insulting. Plaintiff claims she lost consciousness as a result of her fall. Plaintiff's daughter stayed behind to ensure her mother's safety. That Transit expected plaintiff to immediately confront the passengers that Transit itself ordered off the bus is ludicrous. Adding insult to injury, the bus driver testified that the supervisors who boarded his bus told him that when passengers read "MTA", they interpret that as "ATM." It seems fair to assume that if the supervisors believed plaintiff's claim was frivolous, they would have taken statements from other passengers. Alas, no such statements indicating that the stop was not sudden or violent have been provided to the court. This, coupled with plaintiff's description of the accident, the possibility that she was thrown six feet, and NYCTA's own report indicating that plaintiff's fall was due to movement of the bus, warrants denial of the motion.

Based on the foregoing, the motion is granted solely to the extent that the complaint is dismissed against METROPOLITAN TRANSIT AUTHORITY. However, the portion of the motion seeking dismissal of the complaint against NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY is denied.

Dated: 4/16/17
Bronx, New York

HON. MITCHELL J. DANZIGER, J.S.C.