

<b>Baucom v New York City Tr. Auth.</b>
2018 NY Slip Op 31094(U)
May 18, 2018
Supreme Court, New York County
Docket Number: 160219/2014
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: TRANSIT PART: 21

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LAMAR BAUCOM, as Administrator of the  
Estate of YVONNE BAUCOM, deceased,

Plaintiff,

-against-

Index # 160219/2014

Mot Seq. 1

NEW YORK CITY TRANSIT AUTHORITY  
and CITY OF NEW YORK

DECISION AND ORDER

Defendant(s).

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*Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:*

Papers	Numbered	NYCEF #
Defendant's Motion/ Affirmations/Memo of Law	<u>1</u>	17-28
Plaintiff's Opposition and Notice of Cross-Motion	<u>2</u>	30-40
Defendant's Affirmation in Reply	<u>3</u>	41

LISA A. SOKOLOFF, J.

In this wrongful death action brought by Plaintiff Lamar Baucom, as Administrator of the estate of Yvonne Baucom, deceased, against New York City (NYC) and New York City Transit Authority, Defendants move for summary judgment.

On January 20, 2014 at approximately 5:45pm at the Essex Street subway station, Plaintiff's Decedent was struck and killed by a downtown J train. NYPD Officer Kerwin Ford, standing by the turnstiles on the downtown platform, noticed Decedent on the platform as the train doors were closing. Decedent was about eight feet from the train, near the front of the train. Seeing her turn sideways in a wobbly motion, Officer Ford started to walk toward Decedent. Decedent walked toward the stairs to exit, then started back toward the train which was already moving. She reached for a column "to brace

herself," which was two feet from the edge of the platform, but her hand slipped off and the momentum of her body propelled her in the direction of the train. To break her fall, Decedent placed her hand on the moving train, at which point her body twisted clockwise, her cell phone dropped from her hand, her right foot got caught between the train and the platform, and she was dragged along 20 feet of platform before being pulled down and into the tunnel.

Train Conductor Giovanni Ialongo, who had worked on the J line for nine years prior to the accident, and was in the fourth car back from the motorman, stated that he followed the normal procedure prior to the train leaving the station. He viewed the closed-circuit TV for areas that were obscured from view, and leaned his head out his car window to look to the rear of the platform, and then the front, to ensure that the car doors were clear to close, then pushed the button to close the train doors and turned the key to the run position which gave the train operator the signal to proceed. The conductor testified that he did not recall seeing anyone intoxicated or any police officers on the platform, and did not pull his head inside the car until, per standard procedure, three subway cars had entered the tunnel.

Conductor Ialongo testified that as the train left the Essex Street station, he noticed nothing unusual, received no communication from the dispatcher or control center and he followed the same procedure at the next four station stops.

Train Operator John Scannapieco testified that he noticed nothing unusual at the time of the accident. He brought the train into the Essex Street station at the prescribed speed and stopped at the eighth car marker, the designated stopping point, as the train had eight cars. He pushed the door enabler which permitted the conductor to open the doors. After passengers had embarked and disembarked from the train, and the conductor had closed the doors, the lights came on in his cab notifying him that the doors were closed and

locked and he had the signal to move the train. He was looking forward, as is custom. The train operator testified that he had no problem operating the train, the intercom or radio device. There were no disturbances on the train and no problem with any of the passengers. The train proceeded through four subway stops, and only at Broad Street, the fifth subway stop, did a dispatcher and policer officer ask him questions about an incident at the Essex Street station.

Plaintiff contends that there are issues of fact warranting denial of summary judgment, including whether Conductor Ialongo made proper and timely observations as required by commonly accepted safe transit industry practices and MTA rules and regulations.

Summary judgment is a drastic remedy (*Vega v Restani Const. Corp.*, 18 NY3d 499 [2012]) and will only be granted if it is clear that no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]), viewing the facts in the light most favorable to the non-moving party (*Vega*, at 503). The burden is on the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law (*Id.*). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of a triable issue of fact (*Id.*) Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, Defendants have met their burden of demonstrating the absence of any material issues of fact. Officer Ford testified that he only noticed Decedent because there was no one left on the platform – everyone had either gotten on the train or exited the station. The officer, who stood near the fourth or fifth car, observed that when the train pulled in, the conductor had his head out of the window. He did not notice when the

conductor pulled his back in because, once the doors closed, he was already focused on Decedent. According to the officer's testimony, when Decedent placed her hand on the subway car, the train had already been moving for at least ten seconds and was going a little fast, although not unusually fast.

A plaintiff in a wrongful death action is not held to as high a degree of proof as a plaintiff in a personal injury action and is entitled to benefit from every favorable inference which can reasonably be drawn from the evidence in determining whether a *prima facie* case has been made out (*Noseworthy v New York*, 298 NY 76, 80 [1948]; *Locker v Ford Motor Co.*, 91 AD2d 510 [1st Dept 1982]). Here, however, Plaintiff has not alleged how the train conductor or motorman failed to use reasonable care in failing to see Decedent or prevent her death, as she initially walked toward the stairs as the train was moving out of the station. The Court is constrained to find that Plaintiff has failed to raise an issue of fact or present any evidence from which Defendants' negligence may be inferred.

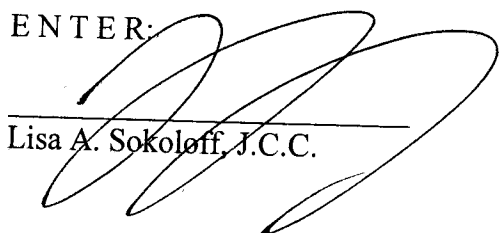
Accordingly, it is

ORDERED, that Defendants' motion for summary judgment dismissing the complaint is granted.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: May 18, 2018  
New York, New York

ENTER:

  
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Lisa A. Sokoloff, J.C.C.