

Umali v Long Is. R.R.
2018 NY Slip Op 31886(U)
August 8, 2018
Supreme Court, Queens County
Docket Number: 25259/12
Judge: Allan B. Weiss
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, **ALLAN B. WEISS** IAS PART 2
Justice

THE ESTATE OF EDGAR UMALI, by ELEANOR
UMALI, Administratrix, and ELEANOR
UMALI, Individually,

Index No.: 25259/12

Motion Date: 4/13/18

Plaintiff,

Motion Seq. No.:2

-against-

LONG ISLAND RAIL ROAD a/k/a MTA-
LONG ISLAND RAIL ROAD,

Defendants.

The following papers numbered 1 to 10 read on this motion by Long Island Rail Road, a/ka/a MTA Long Island Rail Road (“LIRR”), for summary judgment in its favor pursuant to CPLR 3212.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1 - 4
Answering Affidavits - Exhibits	5 - 8
Reply Affidavits	9 - 10

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff in this, inter alia, wrongful death/negligence action seeks damages for personal injuries sustained by Edgar Umali, when he was struck by a moving train owned and operated by the LIRR. Defendant moves for summary judgment in its favor based upon evidence that Umali appeared to intentionally jump onto the tracks in front of the moving train. Plaintiff opposes the motion.

Facts

Larry Kinkela, the train engineer/operator testified upon examination before trial, as follows: the accident occurred on November 23, 2011, at the Central Islip station. He was operating train number 2037, consisting of 12 cars, and he was proceeding from Ronkonkoma to Penn Station. The trip from Ronkonkoma to the Central Islip station is approximately 6-7 minutes. There were no stop signs between Ronkonkoma and Central Islip. The maximum allowable speed between Ronkonkoma and Central Islip was 80 miles per hour and Kinkela was traveling approximately 60 miles per hour after he passed the clear aspect signal before proceeding to the Central Islip station. Thereafter, he began to slow down. Only the south platform at the Central Islip station services passengers. The Lowell Avenue grade crossing is immediately before the Central Islip station. The Central Islip station is approximately 12-14 train car lengths, and each car is approximately 75 to 85 feet long.

Kinkela further testified that the first time he saw Umali on the platform was immediately before the accident, and when he saw Umali, he was “jumping from the platform.” At this point, Kinkela testified, the train was approximately two car lengths away and he was proceeding at approximately 35 miles per hour. He blew the train horn while passing the Lowell Avenue grade crossing and he first sounded his horn at the whistle post, the horn stopped and he operated the horn again when he observed Umali. Kinkela initially testified that he did not see Umali on the platform but saw him in “mid air.” Upon further questioning, Kinkela testified that he observed Umali jump onto the tracks from the platform. He then placed the train in emergency, meaning he applied all the brakes by placing the master controller into emergency mode. Kinkela applied the brakes but was unable to avoid striking Umali. The train ultimately did come to a stop about five to ten seconds after Kinkela applied the emergency brakes. At this point, not all the cars were in the station and Umali was beneath the second car. Kinkela testified that there were approximately 20 to 40 people on the platform.

The affidavit of Joan Rosenthal was submitted in support of the motion. Rosenthal avers that she was standing on the south platform when she observed a person, later identified as Umali, “intentionally jump onto the track area in front of the oncoming train.” Rosenthal goes on the state that the person (Umali) appeared to be alone and he was not pushed. She then observed the train strike Umali.

Jon Ford also submitted an affidavit indicating that he observed a person, later identified as Umali, “intentionally crouch down and jump onto the tracks in front of the oncoming train.” He then observed “[Umali] while on the tracks, extend his arms and legs across the tracks.”

The written statement of witness Eric Hendriks, as taken by the MTA Police Department, was also submitted in support of the motion. Hendriks states that he was standing on the east side of the south platform at the Central Islip station waiting for the 9:18 a.m. train. As the train approached, he observed [Umali] place a black briefcase next to him and then jumped to the track level between the LIRR. [Umali] then walked a short distance north and placed his body across the rail and covered his head with his right arm. Hendriks states that he then observed the train run over the individual with the horn sounding.

Pheris Boyer also witnessed the incident and gave a written statement to the MTA police department. He states that he too was on the south platform waiting for the 9:18 train when he heard the train horn and looked to see [Umali] “jump as if diving onto the tracks.” He observed [Umali] lying with his torso over the third rail and his legs across the running rails. It did not appear that [Umali] made any attempt to move. Boyer observed the train run over [Umali’s] legs. The train came to a full stop and Boyer went to see if he could help [Umali].

Dinah Dixon observed the incident and gave a written statement indicating that she observed [Umali] put his bag down and climb down onto the track. She heard the train horn and turned her head.

As herein relevant, Eleanor Umali testified that Mr. Umali survived approximately three years but ultimately died as a result of the injuries he sustained. She testified that he was unable to communicate to her at all after the subject accident.

Finally, the report of the medical examiner indicates that the cause of death was “complications of blunt force injuries,” and that the manner of death was “suicide.”

The decedent's wife individually and on behalf of the decedent's estate, commenced this action against the LIRR, seeking damages for the decedent's injuries and death and her loss of the decedent's society and guidance. Defendant moves for summary judgment dismissing the complaint, arguing that LIRR was not negligent and that the decedent's own reckless conduct in jumping onto the tracks was the sole proximate cause of the accident and his resulting death. Plaintiff opposes the motion.

Discussion

A train operator may be found negligent if he or she sees a person on the tracks “from such a distance and under such other circumstances as to permit him [or her], in the exercise of reasonable care, to stop before striking the person,” but does not do so (*Mirjah v New York City Tr. Auth.*, 48 AD3d 764, 764 [2008], citing *Coleman v New York City Transit Authority*,

37 NY2d 137, 140 [1975]; *see Soto v New York City Transit Authority*, 6 NY3d 487 [2006]). Here, defendant demonstrated, *prima facie*, that the train operator was not negligent in the happening of the decedent's death.

In support of its motion, the defendant presented, *inter alia*, the deposition testimony of the train operator, Larry Kinkela. Kinkela's testimony may be summarized as follows: he first observed the decedent on the platform immediately before the accident, and when he saw Umali, he was "jumping from the platform." At this point, Kinkela testified, the train was approximately two car lengths away and he was proceeding at approximately 35 miles per hour. He had blown the train horn while passing the Lowell Avenue grade crossing and he sounded his horn at the whistle post; the horn stopped and he operated the horn again when he observed Umali. Kinkela initially testified that he did not see Umali on the platform but saw him in "mid air." Upon further questioning, Kinkela testified that he observed Umali jump onto the tracks from the platform. He then placed the train in emergency, meaning he applied all the brakes by placing the master controller into emergency mode. Kinkela applied all of the brakes but was still unable to avoid striking Umali. The train ultimately came to a stop about five to ten seconds after Kinkela applied the emergency brakes. An autopsy report listed the cause of death as complications of blunt force injuries, and the manner of death as suicide. This evidence is sufficient to demonstrate, *prima facie*, that Kinkela exercised reasonable care and that the accident was unavoidable under the circumstances (*see Mirjah v New York City Tr. Auth.*, 48 AD3d 764, 764–65 [2008]; *Reeve v Long Island Rail Road*, 27 AD3d 636 [2006]; *Wadhwa v Long Island Rail Road*, 13 AD3d 615 [2004]).

The speculative and conclusory assertions of plaintiff's attorney submitted in opposition to the motion fail to raise a triable issue of fact regarding whether the defendant's engineer should have anticipated that the decedent would disregard the obvious danger posed by the train and place himself in a position of extreme peril. In any event, even if the plaintiff had come forward with some evidence of negligence on the part of the defendant, the reckless actions of the decedent constitutes a superseding cause of the accident which relieved the defendant of any liability (*see .g., Lassalle v New York City Tr. Auth.*, 11 AD3d 661 [2004]; *Mooney v Long Is. R.R.*, 305 AD2d 560 [2003]; *Brown v. Long Is. R.R.*, 304 AD2d 601 [2003]). Indeed, an injured party's own reckless and extraordinary conduct can constitute "an intervening and superseding event which severs any causal nexus between the occurrence of the accident and any alleged negligence on the part of the defendants" (*Lynch v Metropolitan Transp. Auth.*, 82 AD3d 716, 717 [2011]; *see Kush v City of Buffalo*, 59 NY2d 26, 33 [1983]; *Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]; *Dumbadze v Schwatt*, 291 AD2d 529, 529 [2002]). To qualify as the type of intervening or superseding event sufficient to break the causal nexus, the conduct or activity engaged in by the injured party must be "so obviously fraught with danger" that its very nature evidences "a wanton disregard for the actor's own personal safety or well-being" (*Lynch v Metropolitan Transp.*

Auth., 82 AD3d at 717; *see Soto v New York City Tr. Auth.*, 6 NY3d 487, 492 [2006]). Whether the conduct of an injured party “is a superseding cause or whether it is a normal consequence of the situation created by the defendant are typically questions to be determined by the trier of fact” (*Dumbadze v Schwatt*, 291 AD2d at 529; *see Derdiarian v Felix Contr. Corp.*, 51 NY2d at 315; *Sang Woon Lee v Il Mook Choi*, 132 AD3d 969, 970 [2015]; *Riccio v Kid Fit, Inc.*, 126 AD3d 873, 873 [2015]). “ ‘However, the issue of proximate cause may be decided as matter of law where only one conclusion may be drawn from the established facts’ ” (*Sang Woon Lee v Il Mook Choi*, 132 AD3d at 970, *quoting Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 889 [2011]).

Here, the decedent's conduct in jumping onto the railroad tracks was an action so obviously fraught with danger that, by its very nature, it evidenced a wanton disregard for the decedent's own personal safety or well-being (*see Tisdell v Metro. Transp. Auth.*, 139 AD3d 844, 846–47 [2016], *lv to appeal denied*, 28 NY3d 901 [2016]; *Lynch v Metropolitan Transp. Auth.*, 82 AD3d at 717; *Mooney v Long Is. R.R.*, 305 AD2d 560 [2003]; *Gai Yi Feng v Metropolitan Transp. Auth.*, 285 AD2d 447 [2001]; *cf. Soto v New York City Tr. Auth.*, 6 NY3d 487 [2006]). Notably, the train operator's duty to see what there is to be seen and try to stop the train certainly is not vitiated because the decedent jumped onto the tracks or because of any reckless conduct on the decedent’s part (*Soto v New York City Tr. Auth.*, *supra*, 6 NY3d at 493), the failure of the train engineer to stop the train in time was not a substantial factor in, or proximate cause of the decedent’s injuries (*see Tisdell v Metro. Transp. Auth.*, 139 AD3d 844, 845 [2016], *lv to appeal denied*, 28 NY3d 901 [2016]). Under the circumstances of this case, and as a matter of law, the decedent's conduct was a superseding event which severed any causal connection between this tragic accident and any alleged negligence on the part of the defendant (*see Derdiarian v Felix Contr. Corp.*, 51 NY2d at 315).

The assertion by plaintiff’s attorney in opposition that the decedent may have fell due to an illness is entirely speculative, and thus insufficient to defeat the defendant's motion for summary judgment (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Carmo v Verizon*, 28 AD3d 508 [2006]; *Delasoudas v Koudellou*, 236 AD2d 581 [2d Dept 1997]).

Accordingly, the motion for summary judgment is granted and the complaint is dismissed.

Dated: August 8, 2018

J.S.C.