

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND DEPARTMENT**

Saidoff v. New York City Transit Authority

105 A.D.3d 726 (2d Dep't 2013) · Decided April 3, 2013

SUMMARY

The Appellate Division, Second Department, affirmed summary judgment dismissing a plaintiff's personal-injury action arising from a stumble while boarding a New York City Transit Authority bus. The court held that, based on the plaintiff's deposition testimony, the defendants had no duty under the circumstances to engage the bus's kneeling device, and the plaintiff failed to raise a triable issue of fact.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Rivera, J.E.; Angiolillo, J.; Chambers, J.; Roman, J.
JURISDICTION	New York
DECIDED	April 3, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants summary judgment dismissing the personal-injury complaint.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Saidoff v. New York City Transit Authority

TOPICS

duty of care negligence personal injury standard of review appellate procedure

PRACTICE AREAS

negligence personal injury municipal law appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants owed the plaintiff a duty to engage the bus's kneeling device under the circumstances.
2. Whether the defendants established entitlement to summary judgment and whether the plaintiff raised a triable issue of fact regarding that duty.

HOLDINGS

1. The defendants did not owe the plaintiff a duty to engage the bus's kneeling device because her deposition testimony showed that she was able to negotiate the height differential between the curb and the bus's bottom step and merely misjudged its height.
2. Summary judgment dismissing the complaint was proper because the defendants established through the plaintiff's deposition testimony that they did not owe her the asserted duty, and the plaintiff failed to raise a triable issue of fact.

KEY QUOTATIONS

“A transit company owes a duty to a prospective boarding passenger to provide him or her with a reasonably safe, direct means of entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance” (727)

FACTUAL BACKGROUND

The plaintiff, who was 67 years old, allegedly stumbled while boarding a bus stopped at the curb and claimed that the driver negligently failed to engage the bus's kneeling device. Before boarding, she did not ask the driver to lower the steps. At deposition, she testified that she misjudged the height of the bottom step, which appeared low but was higher than she expected, and did not testify that she was unable to negotiate the height differential between the curb and the step.

PROCEDURAL HISTORY

The plaintiff sued to recover damages for injuries allegedly sustained while boarding a bus operated by the New York City Transit Authority. The Supreme Court, Kings County, granted the defendants' motion for summary judgment dismissing the complaint. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Kasper v. Metropolitan Transp. Auth. Long Is. Bus, 90 A.D.3d 998, 999 (2011)
- Dobrowolski v. City of New York, 29 A.D.3d 937 (2006)
- Blye v. Manhattan & Bronx Surface Tr. Operating Auth., 124 A.D.2d 106, 111 (1987)
- Santiago v. New York City Tr. Auth., 69 A.D.3d 530 (2010)

- *Trainer v. City of New York*, 41 A.D.3d 202 (2007)
- *Atwell v. New York City Tr. Auth.*, 94 A.D.3d 620 (2012)
- *Carlino v. Triboro Coach Corp.*, 22 A.D.3d 624, 625 (2005)

OPINION

PER CURIAM.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Ash, J.), dated July 18, 2011, which granted that branch of the defendants' motion which was for summary judgment dismissing the complaint. Ordered that the order is affirmed, with costs.

The plaintiff, who allegedly was injured when she stumbled upon boarding a bus operated by the New York City Transit *727Authority, claimed that the bus driver was negligent in failing to engage the "kneeling device" to lower the steps. A transit company owes a duty to a prospective boarding passenger to provide him or her with a reasonably safe, direct means of entrance onto the vehicle, clear of any dangerous obstruction or defect which would impede that entrance (see *Kasper v Metropolitan Transp.*

Auth. Long Is. Bus, 90 AD3d 998, 999 [2011]; cf. *Dobrowolski v City of New York*, 29 AD3d 937 [2006]; *Blye v Manhattan & Bronx Surface Tr. Operating Auth.*, 124 AD2d 106, 111 [1987]). In support of that branch of the defendants' motion which was for summary judgment, they relied upon, inter alia, the plaintiffs deposition testimony.

The plaintiff, who was 67 years of age at the time of the accident, testified that, before boarding the bus, which was stopped at the curb, she did not ask the driver to engage the kneeling device to lower the steps leading onto the bus. She admitted during her deposition that she merely misjudged the height of the bottom step. She testified that when she placed her foot on the bottom step, she thought that the bottom step was low, but it turned out to be higher than expected.

Her testimony demonstrated that she did not appear unable to negotiate the height differential between the curb and the bottom step of the bus when the bus stopped at the curb and opened its doors. Based on the plaintiffs deposition testimony alone, the defendants established that they did not have a duty to engage the bus's kneeling device under the facts of this case (see *Kasper v Metropolitan Transp.*

Auth. Long Is. Bus, 90 AD3d at 999; *Santiago v New York City Tr. Auth.*, 69 AD3d 530 [2010]; *Trainer v City of New York*, 41 AD3d 202 [2007]). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the defendants owed her such a duty {cf. *Atwell v New York City Tr. Auth.*, 94 AD3d 620 [2012]; *Carlino v Triboro Coach Corp.*, 22 AD3d 624, 625 [2005]}.

Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the complaint. Rivera, J.E, Angiolillo, Chambers and Roman, JJ., concur.

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