

No. 17-8000

IN THE
Supreme Court of the United States

SORAZAM BETHUNE,
Petitioner,

v.

MTA LONG ISLAND BUS,
Respondent.

On Petition for Writ of Certiorari to the
New York State Court of Appeals

APPENDIX
RESP. APP 1-11

MICHAEL J. PAGLINO, ESQ.
COUNSEL OF RECORD
ARMIENTI, DEBELLIS,
GUGLIELMO & RHODEN,
LLP
39 Broadway, Suite 520
New York, New York
10006
(212) 809-7074
mpaglino@adgrlaw.com
Counsel for Respondent

RESPONDENT'S APPENDIX

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RESP. APP 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

INDEX NUMBER: 10773/2012

SORORAZAM BETHUNE,

Plaintiff,

- against -

MTA/LONG ISLAND BUS and "JOHN DOE",
first and last name being fictitious said party
intended to be the operator of the bus,

Defendants.

X D. O. P. August 23, 2012

Plaintiff designates
Nassau County as the
place of trial. The
basis of venue is
Plaintiff's residence.
Plaintiff resides at
31 Brewster Street,
Glen Cove, New
York.

SUMMONS

To the above-named defendants:

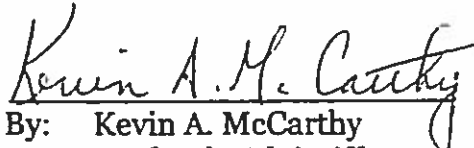
YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer or, if the Complaint is not served with this Summons, to serve a notice of appearance on the Plaintiff's attorney(s) within twenty (20) days after the service of this Summons exclusive of the date of service (or within thirty [30] days after service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Kings Park, New York
August 21, 2012

Defendants' addresses:

- 1) MTA/Long Island Bus
2 Broadway
New York, New York, 10004
- 2) "John Doe"
c/o MTA/Long Island Bus
2 Broadway
New York, New York, 10004

Law Office Of Kevin A. McCarthy


By: Kevin A. McCarthy
Attorneys for the Plaintiff
132 Fifth Avenue
Kings Park, New York, 11754
(516) 429-9953

RECEIVED

AUG 23 2012

NASSAU COUNTY
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Plaintiff,

- against -

**VERIFIED
COMPLAINT**

**MTA/LONG ISLAND BUS and "JOHN DOE"
first and last name being fictitious said party
intended to be the operator of the bus,**

INDEX NUMBER: RECEIVED
7/2012

AUG 23 2012

Defendants.
-----X

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

Plaintiff, by her attorneys, Kevin A. McCarthy, complaining of the
defendants, as and for her verified complaint, alleges, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff, **SORORAZAM BETHUNE** (hereinafter "**BETHUNE**"), at all times mentioned herein, was and is a resident of Nassau County residing at 31 Brewster Street, Glen Cove, New York.

2. Defendant, **MTA/LONG ISLAND BUS** (hereinafter "**MTA**"), at all times mentioned herein, was and is a domestic government corporation and public authority organized and existing pursuant to the laws of the State of New York with its principal place of business and with offices for the regular transaction of business located at 2 Broadway, New York, New York.

3. Defendant, **MTA**, on or about August 24, 2011 and, at all times mentioned herein, was and is the operator and/or owner of a certain motor vehicle, i. e., a passenger bus, bus number 1800, New York registration unknown (hereinafter the "bus") and operated and operates a route known as N79 .

4. Defendant, **JOHN DOE**, first and last name being fictitious said party intended to be the operator of the bus (hereinafter ("**DOE**")), at all times mentioned herein, was and is a resident of Nassau County and/or was and is employed in Nassau County.

5. Defendant, **DOE**, at all times mentioned herein, was and is an employee of defendant, **MTA**, employed as a driver and operator of passenger busses operated and/or owned by the defendant, **MTA**, and, on or about August 24, 2011, was operating the said bus.

6. Defendant, **DOE**, on or about August 24, 2011, was operating the said bus in the normal course of his duties with and within the scope of his employment with defendant, **MTA**, and was operating the said bus with the consent and permission of the defendant, **MTA**.

7. Plaintiff, **BETHUNE**, at or about 8:00 p. m. on August 24, 2011 at or near 1250 Old Country Road, Westbury, New York and while a fare-paying passenger on the said bus, suffered severe and serious personal injuries along with pain and suffering.

8. Said personal injuries and pain and suffering resulted from the negligence of the defendants, **MTA** and **DOE**, when the defendant, **DOE**, before the plaintiff herein had a reasonable time to seat herself on the bus, suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus without any need to so suddenly and abruptly steer the said bus into the flow of traffic instead of merging safely with the traffic thereby causing the plaintiff, **BETHUNE**, to be thrown forward violently, to fall and to sustain the said personal injuries and pain and suffering as alleged by this

Verified Complaint.

9. Plaintiff, **BETHUNE**, as a result of the foregoing, sustained serious personal injuries as defined by section 5102 (d) of the Insurance Law of the State of New York and/or has sustained/will sustain economic loss greater than basic economic loss as defined by section 5102 (4) of the Insurance Law of the State of New York.

10. Plaintiff, **BETHUNE**, is a covered person as defined by the New York State Insurance Law.

11. Plaintiff, **BETHUNE**, thereafter and within ninety (90) days following the occurrence complained of herein, submitted to the defendant, **MTA**, her notice of claim concerning the August 24, 2011 occurrence.

12. At least thirty (30) days have elapsed since the plaintiff, **BETHUNE**, submitted and presented to a member of the defendant, **MTA**, designated for such purpose, the said claim or claims upon which this action is founded and the defendant, **MTA**, has neglected or refused to make a full adjustment or payment of her claim, the plaintiff, **BETHUNE**, having complied with all demands made of her by the defendant, **MTA**, concerning her claim.

13. Plaintiff, **BETHUNE**, as a result of the foregoing, has sustained damages in an amount which exceeds the jurisdictional monetary limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A SECOND CAUSE OF ACTION

14. Plaintiff, **BETHUNE**, repeats, reiterates and realleges in this second cause of action each and every allegation as set forth by paragraphs "1" through

"12" inclusive with the same force and effect as if set forth more fully at length herein.

15. The said personal injuries and pain and suffering of the plaintiff, **BETHUNE**, as alleged by this Verified Complaint, resulted from the negligence of the defendant, **MTA**, by its negligent employment of, negligent hiring of, negligent training of and negligent supervision of its employee, the defendant, **DOE**.

16. Plaintiff, **BETHUNE**, as a result of the foregoing, has sustained damages an amount which exceeds the jurisdictional monetary limits of all lower courts which otherwise would have jurisdiction over this matter.

WHEREFORE, Plaintiff demands judgment:

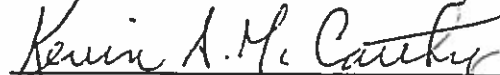
1) on the first cause of action in an amount of damages which exceeds the jurisdictional monetary limits of all the lower courts which would otherwise have jurisdiction over this matter;

2) on the second cause of action in an amount of damages which exceeds the jurisdictional monetary limits of all the lower courts which otherwise would have jurisdiction over this matter

together with the costs and disbursements of this action.

Dated: Kings Park, New York
August 21, 2012

Law Office of Kevin A. McCarthy



By: **Kevin A. McCarthy**

Attorneys for the plaintiff

132 Fifth Avenue

Kings Park, New York, 11754

(516) 429-9953

VERIFICATION

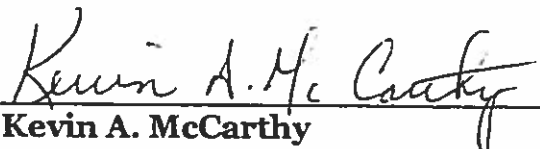
Case: Sororazam Bethune v. MTA/LONG ISLAND BUS *et uno*
Index Number: /2012 (Supreme Court, Nassau County)

The undersigned, an attorney duly admitted to the practice of law before the courts of the State of New York, hereby affirms as true under penalties of perjury that Affirmant is associated with the Law Office of Kevin A. McCarthy, the attorneys of record for the plaintiff herein, that Affirmant has read the annexed Verified Complaint and knows the contents thereof, that the same is true as to Affirmant's knowledge except as to those matters stated to be upon information and belief and as to those matters, Affirmant believes them to be true.

Affirmant, instead of plaintiff, makes this verification for the reason the plaintiff herein resides outside the county where Affirmant maintains his office.

The grounds for Affirmant's belief as to all matters stated to be upon information and belief are as follows: investigations and information received by Affirmant in the course of his duties as an attorney for the plaintiff and as contained in the file as maintained in Affirmant's office.

Dated: Kings Park, New York
August 21, 2012


Kevin A. McCarthy

SUPREME COURT OF THE STATE OF NEW YORK INDEX NUMBER:
COUNTY OF NASSAU /2012

-----X
SORORAZAM BETHUNE,

Plaintiff,

- against -

MTA/LONG ISLAND BUS and "JOHN DOE",
first and last name being fictitious said party
intended to be the operator of the bus,

Defendants.

-----X

SUMMONS and VERIFIED COMPLAINT

Law Office of Kevin A. McCarthy
132 Fifth Avenue
Kings Park, New York, 11754
(516) 429-9953

RESP. APP 2

LIB9290

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Plaintiff,

-against-

MTA/LONG ISLAND BUS and "JOHN DOE" first
and last name being fictitious said party intended to
be the bus operator of the bus,

Defendants.
-----X

VERIFIED ANSWER

Index No.: 10773/2012

Defendant, MTA/LONG ISLAND BUS by its attorneys, ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP, as and for a Verified Answer to the plaintiff's Verified
Complaint, herein alleges as follows:

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

FIRST: Denies knowledge or information sufficient to form a belief as to the
truth of the allegation contained in paragraphs "1" and "4" of the Complaint.

SECOND: Denies in the form alleged the contents of paragraphs "2", "3", "5"
and "6" of the Complaint.

THIRD: Denies each and every allegation contained in paragraphs "7", "8"
and "13" of the Complaint.

FOURTH: Denies each and every allegation contained in paragraphs "9" and
"10" of the Complaint and respectfully refers all questions of law to the determination of the Trial
Court.

FIFTH: Denies each and every allegation contained in paragraphs "11" and
"12" of the Complaint except admits that what purported to be a Notice of Claim was received by
defendant MTA/LONG ISLAND BUS that is claimed to be the basis of the instant lawsuit; that at
least thirty (30) days have elapsed from the time of the receipt of what purported to be a Notice of

Claim by defendant MTA/LONG ISLAND BUS and the commencement of this action; that adjustment and payment by MTA/LONG ISLAND BUS has been refused; and reserves and refers all questions of law, fact and/or conclusions raised therein to the trial court.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

SIXTH: As to paragraph "14", defendant repeats and reiterates each and every allegation and denial contained in paragraphs "1" to "13", above as though more fully set forth at length herein.

SEVENTH: Denies each and every allegation contained in paragraphs "15" and "16" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

EIGHTH: That the culpable conduct of the plaintiff including comparative negligence and assumption of risk, caused, in whole or in part, the damages claimed herein, and pursuant to CPLR Rule 1411, said damages should be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused said damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

NINTH: The complaint herein fails to state a cause of action upon which relief may be granted, and is thus fatally defective.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TENTH: The causes of action herein are barred by the Insurance Law, Section 5104(a), as there is, upon information and belief, no serious injury as defined in the Comprehensive Automobile Insurance Reparations Act.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

ELEVENTH: The Court lacks jurisdiction over the person of the answering Defendant as Plaintiff has/have failed to properly serve Defendant with the Summons in this matter.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

TWELFTH: Plaintiff has failed to commence the instant action within the

applicable Statute of Limitations and said action is thus time barred.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTEENTH: If, at the time of trial, any of the issues herein have finally been determined wholly or partially against the Plaintiff by a tribunal, forum or court, all of competent jurisdiction, then in that event, the Plaintiff will be estopped from relitigating such issue or issues.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FOURTEENTH: That all the dangers and risks incident to the situation mentioned in the complaint were open, obvious and apparent and were known and assumed by plaintiff.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

FIFTEENTH: Defendant alleges that the Plaintiff failed to comply with the requirements under CPLR Section 306-b.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

SIXTEENTH: MTA/LONG ISLAND BUS states that plaintiff could have avoided the injuries and damages alleged herein.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

SEVENTEENTH: MTA/LONG ISLAND BUS states that plaintiff failed to take any or sufficient action, or such action as was necessary, to mitigate or minimize the injuries and damages alleged or the conditions that allegedly gave rise to those purported injuries or damages.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

EIGHTEENTH: That in the event of any judgment or verdict on behalf of the plaintiff, the defendant is entitled to a set-off or verdict with respect to the amounts of any payments made to the plaintiff for medical and other expenses prior thereto.

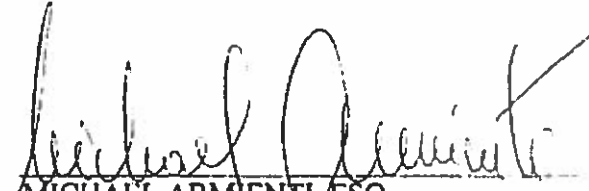
AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

NINETEENTH: Plaintiff has failed, as a condition precedent to commencement of the instant lawsuit, to properly plead as to Defendant, MTA/LONG ISLAND BUS, as required by the Public Authorities Law.

WHEREFORE, the answering defendant MTA/LONG ISLAND BUS, respectfully prays

for a judgment dismissing the complaint against it, granting judgment in its favor on the claim herein, all together with the costs and disbursements of this action, and for such other and further relief as to this Court may deem just and proper.

Dated: New York, New York
November 9, 2012



MICHAEL ARMIENTI, ESQ.

ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA/LONG ISLAND BUS
39 Broadway, Suite 520
New York, New York 10006-3034
(212) 809-7074

TO: KEVIN A. MCCARTHY
LAW OFFICES OF KEVIN A. MCCARTHY
Attorneys for Plaintiff
132 Fifth Avenue
Kings Park, NY 11754
(516) 429-9953

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

Deponent, is MICHAEL ARMIENTI, ESQ. of ARMIENTI, DeBELLIS, GUGLIELMO & RHODEN, LLP , the attorneys of record for MTA/LONG ISLAND BUS, Defendant in the within action. Deponent has read the foregoing ANSWER and contents thereof. The same is true to deponent's own knowledge, except as to the matters herein stated to be alleged on information and belief; and as to those matters deponent believes them to be true. This verification is made by deponent and not by said Defendant because the Defendant, upon information and belief:

- ☒ [x] is a governmental agency, pursuant to CPLR Section 3020(d)(2).
- ☐ [] is a foreign corporation or
- ☐ [] is a corporation, none of whose offices are within the county where your deponent maintains their office.
- ☐ [] is a partnership, none of the partners being in the county where your deponent maintains their office.
- ☐ [] is an individual not residing in the county where your deponent maintained their office.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
November 9, 2012


MICHAEL ARMIENTI, ESQ.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

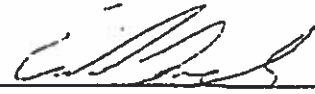
ERIK LIDES, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Queens, New York.

That on the 13 day of November, 2012, deponent served by mail the within: VERIFIED ANSWER UPON:

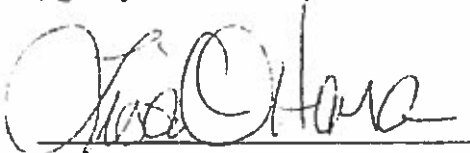
KEVIN A. MCCARTHY
LAW OFFICES OF KEVIN A. MCCARTHY
Attorneys for Plaintiff
132 Fifth Avenue
Kings Park, NY 11754
(516) 429-9953

which addresses is/are designated by said attorney(s) for purpose, by depositing a true copy thereof, enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department of the State of New York.



ERIK LIDES

Sworn to before me this
13 day of November, 2012



LISA O'HARA
Commissioner of Deeds, City of New York
No. 4-7097
Certificate filed in New York County
Term Expires October 1, 2013

RESP. APP 3



NASSAU COUNTY CLERK'S OFFICE
ENDORSEMENT COVER PAGE

Recorded Date: 04-21-2015
Recorded Time: 12:28:12 p

Record and Return To:

Liber Book:
Pages From:
To:

Control
Number: 1025
Ref #: 12--010773
Doc Type: C28 MOTION/CROSS-MOTION

Plnt: BETHUNE, SORORAZAM
Dfnd: MTA/LONG ISLAND BUS

AAJ001

Taxes Total
Recording Totals
Total Payment

COUNTY CLERK OF
NASSAU COUNTY
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JUL 08 2015

FILED
NASSAU INDEX #

12-010773

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED
MAUREEN O'CONNELL
COUNTY CLERK



2015042101025

LIB9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

SORORAZAM BETHUNE,

Plaintiff,

-against-

MTA/LONG ISLAND BUS, and "JOHN DOE" first
and last name being fictitious said party intended to be
the bus operator of the bus,

Defendants.

MOTION BY:

ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA LONG ISLAND BUS

DATE, TIME AND
PLACE OF HEARING:

May 29, 2015 at 9:30 a.m. or as soon thereafter as
counsel can be heard at the courthouse located at
Supreme Court, Nassau County, Central Motion Part,
100 Supreme Court Drive, Room 152, Mineola, New
York 11501.

SUPPORTING PAPERS:

Affirmation of James J. Dunning, Esq. dated April
14, 2015, and accompanying Memorandum of Law
of James J. Dunning, Esq. dated April 14, 2015, upon
attached exhibits herein.

RELIEF DEMANDED:

An Order 1) pursuant to CPLR Rule 3212 granting
Summary Judgment to Defendant, MTA LONG
ISLAND BUS, thereby dismissing plaintiff's
Summons and Complaint in its entirety; and 2)
granting such other and further relief as this Court
deems just and proper.

MOTION SEQUENCE

ORIGINAL RETURN DATE

RELIEF

SUBMISSION DEADLINE

002

5-29

STD

2-28

Index No.: 10773/2012

NOTICE OF MOTION Part 1 of 3

Return Date: May 29, 2015

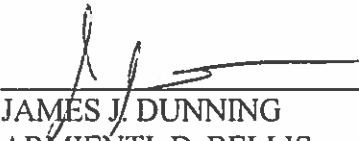
Before Hon. Justice
Angela G. Iannacci

PH 1:29

ANSWERING PAPERS:

Pursuant to CPLR Rule 2214(b), all answering papers, if any, and any notice of cross-motion with supporting papers are required to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
April 14, 2015



JAMES J. DUNNING
ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA LONG ISLAND BUS
39 Broadway, Suite 520
New York, NY 10006
(212) 809-7074

TO: STUART A. JACKSON, ESQ.
The S.A. Jackson Law Firm, P.C.
Attorneys for Plaintiff
70 East 55th Street
New York, New York 10022
(212) 755-0500

LIB9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Plaintiff,

Index No.: 10773/2012

-against-

**ATTORNEY AFFIRMATION
IN SUPPORT**

MTA/LONG ISLAND BUS and "JOHN DOE" first
and last name being fictitious said party intended to be
the bus operator of the bus,

Defendants.

-----X

JAMES J. DUNNING, an attorney duly admitted to practice law before the courts of the
State of New York, hereby affirms the following under the penalties of perjury:

1. I am an associate with the law firm of ARMIENTI, DeBELLIS, GUGLIELMO &
RHODEN, LLP, attorneys for defendant, MTA LONG ISLAND BUS (hereinafter referred to as
"Defendant") and, as such am fully familiar with the facts and circumstances heretofore had
herein.

RELIEF REQUESTED

2. This affirmation is respectfully submitted in support of Defendant's motion for an
Order pursuant to 1) CPLR §3212 granting Defendant summary judgment and dismissing the
summons and complaint of plaintiff, Sororazm Bethune in its entirety; and 2) for such other and
further relief as this Court may deem just, proper and equitable.

**Defendant reserves their right to defend this action as to all other issues, including
proximate cause and the serious injury threshold, at the time of trial.**

NATURE OF THE ACTION

3. This is a personal injury action in which plaintiff, Sororazm Bethune alleges that on August 24, 2011, she was a passenger on the N79 bus and was injured when after boarding and while walking to a seat the bus left the bus stop and “swerved into the flow of traffic”, causing her to hit her left ankle on a chair. She did not fall due to the bus pulling out of the bus stop. The bus was not involved in an accident with a pedestrian or another vehicle. There are no other claims associated with the subject occurrence and no one was caused to fall due to the bus leaving the bus stop. There are also no witnesses to the alleged occurrence.

4. It should be noted for the record, this is plaintiff’s second such action against the Defendant for essentially the same type of occurrence and identical injuries. Plaintiff initiated an action, under Index No. 4148/2012, in Supreme Court, Nassau County for damages for personal injuries alleged to have arisen on April 11, 2011 (approximately four months prior to the alleged occurrence), when plaintiff was a passenger on Defendant’s bus. Plaintiff alleged she was injured when the bus suddenly left the bus stop after she boarded and while walking to a seat the bus operator braked causing her left foot to make contact with the metal undercarriage of a passenger seat. Plaintiff’s back was turned to the front of the bus and did not know why the bus braked or slowed down upon leaving the bus stop. Despite this and the fact that she did not know the bus operator, she also alleged that the bus operator intentionally attempted to hurt her.

5. Said prior action was dismissed via summary judgment by the Hon. Justice John Galasso on January 31, 2014. A copy of Judge Galasso’s decision is annexed hereto as **Exhibit “A”**.

PROCEDURAL HISTORY

6. Plaintiff filed a notice of claim against the Defendant for said incident on or about January 19, 2012. The notice of claim was signed and notarized by the plaintiff. A copy of the

notice of claim is annexed hereto as **Exhibit "B"**. Plaintiff gave a very detailed statement of the occurrence. She alleged that on August 24, 2011, at approximately 8:00 p.m. she boarded the N79 bus, bus #1800. Specifically, she stated that she paid her fare and while walking to a seat the "Bus Driver Viciously made a sudden sharp violent left turn with such speed, as if someone was chasing him. I immediately left the bags which I was holding go on the floor in order not to fall and hit my head. I was able to hold on to top of the closest seat on the right side, right after the handicap seats on the right, the first right row. By holding onto the chair I did not fall, however, my left Ankle and the area above my ankle, Left leg (left foot had been injured on 4/11/2011 by N23 Long Island Bus Driver), hit the bottom of the chair and my Ankle and the Bone on top of it was hurting and bruised." The plaintiff goes on to state that she was furious and screamed at the bus operator but he did not respond to her.

7. Thereafter, this matter was commenced by the filing of Plaintiff's Summons and Complaint on or about August 23, 2012. A copy of the complaint is annexed hereto as **Exhibit "C"**. In Plaintiff's complaint is alleged that on August 24, 2011, at approximately 8:00 p.m., at or near 1250 Old Country Road, Westbury, New York, MTA Long Island Bus and John Doe, the party intended to be the operator of the bus, were negligent in the operation of said bus. Specifically, it is alleged that "before the plaintiff herein had a reasonable time to seat herself on the bus, suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus without any need to so suddenly and abruptly steer said bus into the flow of traffic instead of merging safely with traffic causing plaintiff, BETHUNE, to be thrown forward violently, to fall and to sustain the said personal injuries".

8. Besides for alleging general negligence, plaintiff also makes claims for negligent employment, negligent hiring, negligent training and negligent supervision of John Doe, the

party intended to be the operator of the bus.

9. Issue was joined by the service of an Answer on behalf of the Defendant on or about November 13, 2012. A copy of Defendant's Answer is annexed hereto as **Exhibit "D"**.

10. On or about February 19, 2013, Plaintiff served a Verified Bill of Particulars. Plaintiff's Bill of Particulars is annexed hereto as **Exhibit "E"**. Said document alleges that the incident occurred on August 24, 2011 at approximately 8:00 p.m. at or near the vicinity of the N79 bus stop/1250 Old Country Road, Westbury, New York. In paragraph #4 it is alleged that Defendant prior to the plaintiff being able to seat herself after boarding the bus and without insuring that she was seated safely, abruptly, impatiently and with great unnecessary, violent and undue force suddenly accelerated the bus for no apparent reason and suddenly swerved the bus sharply thereby causing the plaintiff to lose her balance and to sustain injuries.

11. In paragraph #5 it is alleged the bus number was 1800. Further, in paragraph #5 plaintiff alleges Defendant was negligent for abruptly, rapidly and violently accelerating the bus for no reason; failing to accelerate the bus in a proper and timely manner; accelerating the bus before the plaintiff was seated safely; failure to insure the safety of the plaintiff while she was a passenger on the bus; failure to be aware of the then and there existing traffic conditions; operating the bus in a reckless and unprofessional manner; and abruptly and violently swerving into traffic without any reason while the plaintiff was in the process of seating herself thereby causing the plaintiff to lose her balance, to fall and to sustain the injuries complained herein.

12. In paragraph # 2 of the bill of particulars, plaintiff is noted to be 55 years old at the time of the occurrence.

13. The note of issue was filed with the Clerk's Office on December 15, 2014. A copy of the note of issue and the E-Law printout is annexed hereto as **Exhibit "F"**.

14. As per the preliminary conference order of this Court on July 2, 2013 and the certification order of May 28, 2014, motions for summary judgment must be made within 120 days of the filing of the note of issue. Therefore this motion is timely. Copies of the Court Orders are annexed hereto as **Exhibit "G"**.

RELEVANT FACTS-STATUTORY HEARING TESTIMONY OF PLAINTIFF

15. It should be noted at the outset that it is sufficient for the Defendant to rely upon deposition testimony as evidence of some of the factual bases for its motion for summary judgment. (See Gaeta v. New York News, 62 N.Y.2d 340, 477 N.Y.S.2d 82, 465 N.E.2d 802 (1984); Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595, 404 N.E.2d 718 (1980)).

16. A statutory hearing of the plaintiff was conducted on September 16, 2011. The hearing was borne out by plaintiff's first alleged incident of April 11, 2011. In said hearing plaintiff also testified to her alleged subsequent incident of August 24, 2011, which occurred only three weeks prior to her giving testimony. Plaintiff's certified statutory hearing transcript is annexed hereto as **Exhibit "H"**. It should be noted that plaintiff annexed 11 pages of Errata Sheets to her statutory hearing transcript and wrote inside the pages of the transcript as well. The Errata Sheets, along with her handwritten notes in the margins should be disregarded by the Court because they are not in accordance with CPLR §3116 as plaintiff did not provide a statement for the reasons for making the changes. With that being said, the plaintiff made no substantive changes to those sections of her testimony, which are referenced below regarding how this alleged accident occurred.

17. Plaintiff testified that on August 24, 2011 at 8:00 p.m. she boarded the N79 bus, bus #1800 going towards Mineola. (**Exhibit "H"** pgs. 82-83, 88). She was coming from Costco

and was carrying two big and heavy shopping bags. (*Id.* pgs. 83, 86). She paid her fare and then carried her bags to go sit down. (*Id.* pg. 83). Plaintiff described the incident as she was walking from the fare box; she was at the first row of seats past the handicap seats behind the operator, when the bus made a sharp turn into traffic as if someone was “chasing” the bus. (*Id.* pg. 83). As a result, she dropped the bags, moved to the right with her left ankle making contact with a chair. (*Id.* pgs. 83, 86). She did not fall as a result of the bus moving into traffic as she was able to grab onto a seat. (*Id.* pgs. 83-84). Plaintiff alleged that she then walked back and yelled at the bus operator telling him she almost fell. (*Id.* pg. 84). However, the operator did not respond to her. (*Id.* pg. 84). Plaintiff described the bus operator as being “nasty” even though he never spoke to her. (*Id.* pg. 84).

18. Plaintiff testified that after the alleged occurrence she rode the bus for approximately 10 minutes disembarking at Roosevelt Field. (*Id.* pg. 86). Prior to exiting the bus she alleged that she again made a complaint to the operator and threatened to report him. (*Id.* pg. 87). Again the operator did not respond. (*Id.* pg. 87). Upon exiting the bus she did not call the police or for an ambulance. (*Id.* pg. 87). She then got on the N27 bus, which she took home. (*Id.* pg. 90).

19. The plaintiff described the bus operator as a Caucasian or Spanish male, between the ages of 50 to 55 with dark hair but bald on top. (*Id.* pgs. 84-85). She did not know if the bus operator had facial hair and of course did not take down the operator’s name or the names of any witnesses to the occurrence. (*Id.* pgs. 85-86).

20. As noted above, plaintiff’s description of the alleged incident on August 24, 2011 is nearly identical to her prior incident of April 11, 2011. In the April 11, 2011 incident, she alleged that the bus operator negligently hit the brakes (though the bus did not come to a stop)

after she boarded and while she walking to a seat. She did not know why the bus braked. (*Id.* pgs. 41-60). In contrast, in the case at bar, plaintiff now alleges after boarding and while walking to a seat the bus moved out of the bus stop and moved into a moving lane of traffic.

RELEVANT FACTS-DEPOSITION TESTIMONY OF PLAINTIFF

21. The deposition of the plaintiff for the prior occurrence of April 11, 2011, was conducted on November 9, 2012. In said deposition, plaintiff testified as to the alleged occurrence of August 24, 2011. The deposition transcript is annexed hereto as **Exhibit "I"**. Once again plaintiff served no less than 21 errata sheets upon which purported to make nearly 200 corrections to her deposition testimony. The errata sheets are annexed to **Exhibit "I"**. Thereafter, Defendant sent a letter to plaintiff rejecting the errata sheets because they failed to comply with the requirements of CPLR Section 3116. A copy of the letter is annexed hereto as **Exhibit "J"**. A motion was subsequently filed striking plaintiff's purported corrections. A copy of said motion is annexed hereto as **Exhibit "K"**. The Court in a decision dated May 21, 2013, granted Defendant's motion striking the corrections to plaintiff's deposition transcript. A copy of said decision is annexed hereto as **Exhibit "L"**.

22. Plaintiff testified that on August 24, 2011 she was involved in an accident on the N79 bus. (**Exhibit "I"** pgs. 160-161). The accident occurred as the bus was leaving the bus stop and moved into the left lane of travel. (*Id.* pgs. 163-164). She was carrying two bags as she boarded the bus. (*Id.* pg. 161). She paid her fare and was walking in the direction of the rear of the bus, to an empty aisle seat that was just past the row of handicap seats directly behind the bus operator. (*Id.* pgs. 161, 165-166).

23. Specifically, plaintiff described the accident as follows:

Q. And at the time of that accident, were you standing, sitting on the bus?

A. I was waiting for it. It came around eight o'clock. It was late 20 minutes. It came, I got on the bus and I was carrying two bags. I put my quarters in and went to sit down.

Q. Right.

A. And he moved sharply to the left.

(*Id.* pg. 161).

Q. And is this, again, sort of the bus moving and taking off from a bus stop?

A. Well, he moved to the left as if someone was chasing him and there was no traffic and he would do that. People don't talk to him. He's very nasty, he doesn't talk to anybody. He has schizophrenia or something.

Mr. McCarthy: Stop. You answered

(*Id.* pg. 163).

Mr. McCarthy: Yes or no, did this happen as he was leaving a bus stop?

A. Yes.

(*Id.* pg. 163).

Q. At that point did the bus make a turn, like a left or a right?

A. Yes, he went all the way to the left.

Q. He made a left turn, okay.

A. No, no, he went to the left lane. In a few blocks he made a left toward that DMV road to go to Roosevelt Field.

(*Id.* pg. 164).

Q. Okay. And a result of the movement of the bus, at that point you were in the process of trying to sit down, but you were still standing; am I correct?

A. Yes, I had two bags in my hand. I let them go because –

Mr. McCarthy: He's not asking you what happened. He wants to know were you still standing?

A. Yes, I was standing. I was trying to sit down.

Q. And did you body – if we're facing the rear of the bus from the front, if you're looking into the rear, did your body move in some direction to the left or to the right?

A. Yes, when he did that I hold on to the chair not to fall and my ankle was hit.

Q. Your left ankle?

A. Yes.

Q. So your left ankle hit a chair?

A. Yes.

(*Id.* pgs. 164-165).

24. Should this Court want to consider plaintiff's errata sheets in terms of how this incident occurred despite the prior court order, plaintiff's testimony is virtually unchanged though she mainly adds her own unsolicited thoughts and opinions of the occurrence. She described westbound Old Country Road as having three lanes of travel and alleged that the bus moved from the right lane into the left lane of travel upon leaving the bus stop. (Errata Sheet pg.

16 referring to page 165 line 6). Plaintiff added that she saw the bus operator turn the steering wheel to the left when she paid her fare and before the bus moved, indicating she was aware that the bus was going to move to its left. (Errata Sheet pg. 15 referring to page 163 line 16). Despite her claims of agonizing pain to her ankle she immediately walked back to the front of the bus to allegedly yell at the bus operator. (Errata Sheet pg. 16 referring to page 165 line 6).

25. The deposition of the plaintiff for this alleged occurrence took place on March 18, 2014. The deposition transcript is annexed hereto as **Exhibit "M"**. Once again Plaintiff served 5 pages of Errata Sheets with 52 corrections to Plaintiff's Deposition Testimony. The Errata Sheets are annexed to **Exhibit "M"**. The Errata Sheets were signed by the Plaintiff and dated July 26, 2014. This was well past the 60 days that are permissible under CPLR §3116(a). As a result, a motion was subsequently filed striking plaintiff's purported corrections. A copy of said motion is annexed hereto as **Exhibit "N"**. As per the order of this Court said motion of the Defendant was denied on or about March 19, 2015. A copy of the decision is annexed hereto as **Exhibit "O"**.

26. Plaintiff testified that the incident occurred on August 24, 2011 at approximately 8:00 p.m., while she was a passenger on the N79 bus, bus number #1800. (**Exhibit "M"** pg. 34). The incident occurred on Old Country Road in Westbury, across from Costco. (*Id.* pg. 34). She had gone food shopping at Costco and was carrying two big bags, one bag in each hand. (*Id.* pgs. 37-38). She recalled crossing Old Country Road to reach the bus stop. (*Id.* pgs. 37-38). When the N79 bus arrived she boarded the bus from the front. (*Id.* pg. 40). She was the only person to board the bus. (*Id.* pgs. 40, 42). Upon boarding the bus she put her bags down and paid the fare with quarters. (*Id.* pg. 42). The bus doors were closed but the bus had not started to move when she paid her fare. (*Id.* pgs. 43-44). While paying the fare and while the bus was stopped she recalled seeing the bus operator had started to turn the wheel. (*Id.* pg. 44). After paying her fare she picked up her two

bags, one in each hand and began walking to an empty aisle seat that was situated at the first row, directly past the three handicap seats on the driver's side of the bus. (*Id.* pgs. 45-46). She had already taken three to four steps walking in the direction of the rear of the bus when the bus began to move. (*Id.* pgs. 47-48). She was already at the aisle seat, to which she was intending to sit in when the bus began to move. (*Id.* pg. 51). She described the movement of the bus as moving from the right lane into the left lane (there were three moving lanes of traffic). (*Id.* pgs. 47-48). She did not know how fast the bus was moving at that point but she described the movement as "violent". (*Id.* pg. 49). Plaintiff testified that she dropped the bags she was carrying and grabbed onto the chair she was intending to sit in with her left hand. (*Id.* pgs. 50-52). She alleged that her left ankle hit the bottom of the chair. (*Id.* pg. 50). She was still standing and did not fall even though she described the movement of the bus as violent. (*Id.* pg. 55).

27. Plaintiff testified that only two seconds passed from the time she picked up the bags after paying her fare, (bus had not begun to move) and until her left ankle hit the bottom of the chair. (*Id.* pg. 56). This would essentially mean the bus was moving for only one second prior to the occurrence. She also alleged that within one or two seconds after hitting her left ankle on the chair she was able to walk back to the front of the bus to speak with the bus operator, despite her claims the bus was moving fast and violently. (*Id.* pg. 57). She yelled, cried and screamed at the bus operator for 10 seconds. (*Id.* pgs. 58-59). The bus operator did not respond to her. (*Id.* pg. 58). Despite her claims that the bus was traveling fast, after yelling at the bus operator she was able to stop and stand inside the moving bus and speak to another passenger before sitting down. (*Id.* pgs. 61-62). Plaintiff knows of no witnesses to the occurrence. (*Id.* pg. 60). No one else was injured despite plaintiff's claims the bus moving violently and fast out of the bus stop. (*Id.* pg. 64). She was on the bus for approximately five minutes from the time she entered until the time she got off the

bus at Roosevelt Field. (*Id.* pg. 65). Before she got off the bus at Roosevelt Field the bus pulled into another bus stop and picked up a passenger. (*Id.* pgs. 64-65).

28. At Roosevelt Field, she waited 45 minutes and then got on the N27 bus, which she took home. (*Id.* pgs 71-75). She made no phone calls after the occurrence. (*Id.* pg. 72).

29. Should this Court want to consider plaintiff's errata sheets, the testimony that is noted above is virtually unchanged except for her own unsolicited thoughts and opinions, which plaintiff likes to add to her answers despite the question not calling for such a response.

**RELEVANT FACTS-DEPOSITION TESTIMONY OF
BUS OPERATOR**

30. The deposition of Bus Operator Jeffrey Epstein on behalf of the Defendant was conducted on April 18, 2014. However, this deposition transcript was never forwarded to the movant by plaintiff's counsel. Despite the fact that Mr. Epstein fit the description of the operator she described during her testimony, except for the operator's hair, Plaintiff appeared at the deposition and alleged that Mr. Epstein was not the bus operator. It should be pointed out this is the same exact thing plaintiff did in the prior action as well. Plaintiff appears to be attempting to try and create an issue of fact by alleging that the Defendant is purposely not producing the correct bus operator.

31. As noted above, the subject incident was unreported. Based on the information provided, such as the route, bus number and time of the alleged occurrence, upon information and belief, Mr. Epstein was the bus operator. Annexed hereto is Mr. Epstein's Bus Operator's Accident Report, which essentially states Mr. Epstein has no knowledge of the subject occurrence. The Bus Operator Accident Report is annexed hereto as **Exhibit "P"**.

ARGUMENT

PLAINTIFF'S TESTIMONY IS INSUFFICIENT, AS A MATTER OF LAW, TO CAST THE COMMON CARRIER IN LIABILITY

32. In order to recover against a common carrier for injuries allegedly sustained by a passenger occasioned by the movement of a conveyance, there must be evidence to show that the stop or start of that vehicle caused a jerk or lurch that was sudden, unusual, and violent. Urquhart v. New York City Transit Authority, 85 N.Y.2d 828, 623 N.Y.S.2d 838, 647 N.E.2d 1346 (1995).

33. A plaintiff's mere characterization of such movement as "unusual" or "violent," or such other descriptive term is insufficient as a matter of law to cast the common carrier in liability. Rather, a plaintiff must show by objective evidence the nature of such movement. In the case at bar, no such objective evidence has been offered.

34. In Golub v. New York City Transit Authority, 40 A.D.3d 581, 836 N.Y.S.2d 197 (2nd Dept. 2007), the Appellate Division reversed the trial court's granting of summary judgment to the plaintiff, notwithstanding a claim that she fell from her seat onto the floor when the bus made a right turn at a "very very high speed." The appellate court explained:

To establish a *prima facie* case of negligence against a common carrier for injuries sustained by a passenger as a result of the movement of the vehicle, the plaintiff must establish that the movement consisted of a jerk or lurch that was "unusual and violent" (Urquhart v. New York City Tr. Auth., 85 N.Y.2d 828, 830, 647 N.E.2d 1346, 623 N.Y.S.2d 838 [1995], quoting Trudell v. New York R.T. Corp., 281 N.Y. 82, 85, 22 N.E.2d 244 [1939]; Assante v. New York City Tr. Auth., 22 A.D.3d 698, 805 N.Y.S.2d 397 [2005]). The nature of the incident, in which the plaintiff, according to the testimony she gave at a hearing pursuant to General Municipal Law § 50-h, was merely caused to land on the floor in front of her seat, is not, in itself, sufficient to provide the objective support

necessary to demonstrate that the movement of the bus was “unusual and violent,” and of a “different class than the jerks and jolts commonly experienced in city bus travel” (Urquhart v. New York City Tr. Auth., *supra* at 830; Banfield v. New York City Tr. Auth., 36 A.D.3d 732, 828 N.Y.S.2d 534 [2007]). Notably, the plaintiff, who testified that she did not own a car, was unable to estimate the speed at which the bus was traveling at the time of the occurrence, and further testified that no other passengers, whether seated or standing, were caused to fall. In opposition to the defendant’s establishment, *prima facie*, of its entitlement to judgment as matter of law on the issue of liability, the plaintiffs failed to raise a triable issue of fact.

35. The Golub case is very similar to the case at bar, in that both plaintiffs testified that the bus was speeding or traveling fast without offering anything more.

36. Likewise, in Harwin v. Metropolitan Transportation Authority, 45 A.D.3d 488, 847 N.Y.S.2d 35 (1st Dept. 2007), determined that dismissal of the complaint was warranted, noting:

The court properly set aside the verdict and dismissed the complaint on the basis that plaintiff failed to establish a *prima facie* case of negligence against defendants in this matter, where plaintiff was injured when she was caused to fall when the subway car that she had just boarded departed the station in an allegedly sudden manner. Plaintiff’s description of the incident at trial and the nature of her injuries were not sufficient to satisfy her requirement of showing that the train’s departure from the station “caused a jerk or lurch that was ‘unusual and violent’” (Urquhart v. New York City Tr. Auth., 85 N.Y.2d 828, 930, 647 N.E.2d 1346, 623 N.Y.S.2d 838 [1995], quoting Trudell v. New York R.T. Corp., 281 N.Y. 82, 85, 22 N.E.2d 244 [1939]). Rather, the record evidence demonstrates that plaintiff did not observe any other passenger fall, no other person is known to have complained about the movement of the subway car at the time of her fall, and plaintiff, who fell forward rather than backward, did not fall a significant distance (see Golub v. New York City Tr. Auth. 40 A.D.3d 581, 582, 836 N.Y.S.2d 197 [2007]).

37. In the case at bar, plaintiff’s testimony, as to the motion of the bus clearly falls squarely within the holding of Harwin, and Golub *supra*. The fact that the incident occurred within two seconds of the bus leaving the bus stop establishes the bus could not have been

traveling fast as has been alleged. As noted above, plaintiff testified that only two seconds passed from the time she paid her fare; began walking to her sit; and allegedly hitting her left ankle on the chair that she was intending to sit in, due to the movement of the bus upon leaving the bus stop. Plaintiff also testified that she took three to four steps from the fare box and was at the seat she was intending to sit in when the bus first began to move. This clearly establishes the bus was just moving out of the bus and could not have been traveling fast as has been alleged.

38. Further, Plaintiff's claim that the bus was moving into the left lane of travel is inconsequential. Even if we accept plaintiff's claim that within two seconds of leaving the bus stop the bus moved or "swerved" into the left lane of travel (it's possible an expensive sports car could pull out of bus stop and move into the left lane of travel within two seconds, not a City Bus), vehicles change lanes for various reasons such as traffic conditions or for route purposes. The fact that plaintiff stated that there was "no reason" for the bus to change lanes is not based on anything other than her own opinion. Plaintiff did not know what the traffic conditions were in front of, next too or behind the bus and any assertions that she did has to be looked at skeptically since the incident occurred within two seconds of the bus leaving the bus stop and she was walking to a seat.

39. Removing plaintiff's attempts to sensationalize the bus movements, it is clear that the bus was only just beginning to move out of the bus stop when this alleged incident occurred. The evidence is clear the bus did not come in contact with another vehicle or pedestrian when it moved out of the bus stop. The bus did not come to a short stop but proceeded into the moving lane of travel. Despite plaintiff's claims that the bus "accelerated and swerved" the plaintiff did not fall. Plaintiff was able to hold onto the chair with only one hand. No one on the bus fell or was injured. Plaintiff also admitted that within two seconds of the occurrence she walked back to

the front of the bus and stood next to the bus operator to yell at him. It would stand to reason if the bus was traveling fast as alleged she wouldn't have been able to immediately walk back to the front of the bus. It also has to be mentioned that as per plaintiff's testimony she stopped and stood to talk to another passenger after yelling at the bus operator despite her claims the bus was traveling fast.

40. There is no evidence to suggest that the operation of the bus was anything but the normal "jerks and jolts commonly experienced in city bus travel". Urquhart v. New York City Tr. Auth., *supra* at 830. Plaintiff's testimony establishes that there is no objective evidence that the movement of the bus was unusual and violent as alleged. Using such descriptive terms without objective evidence is not enough to defeat the within motion.

41. Merely repeated that the bus "jolted" has been held to be insufficient to defeat summary judgment. (Urquhart v. New York City Tr. Auth., *supra* at 830; Banfield v. New York City Tr. Auth., 36 A.D.3d 732, 828 N.Y.S.2d 534 [2007]).

42. Any argument put forth by the plaintiff that the acceleration and movement of the bus caused a jerk or lurch that was unusual or violent is unsupported by plaintiff's testimony. Again the fact that the alleged incident occurred within two seconds of the bus moving out of the bus stop establishes that the bus could not have been traveling at a high rate of speed as plaintiff alleges. Moreover, the fact that she did not fall down, nor did anyone else; establishes that the movement of the bus was nothing out of the ordinary in vehicular travel. It also can't be argued that the plaintiff even moved a significant distance inside the bus due to the alleged acceleration and movement of the bus.

**II. DEFENDANT DID NOT BREACH A DUTY TO CARE TO
THE PLAINTIFF BY MOVING BUS OUT OF BUS STOP BEFORE
PLAINTIFF WAS SEATED**

43. It is indisputable that in order for a party to make out a prima facie cause of action in negligence the moving party must show 1) a duty owed, 2) a breach of the duty owed, 3) the breach of the duty owed was the proximate cause of the alleged injury, and 4) an actual injury. See Quick v. G.G's Pizza & Pasta, Inc., 53 A.D. 3d 535, 861 N.Y.S. 2d 762 (2nd Dept, 2008) and Nappi v. Incorporated Village of Lynbrook, 19 A.D. 3d 565, 796 N.Y.S. 2d 537 (2nd Dept. 2005).

44. In plaintiff's bill of particulars it is alleged that the Defendant was negligent for moving the bus out of the bus stop before the plaintiff was seated. Any argument put forth by the plaintiff that the Defendant was negligent for moving the bus out of the bus stop before the plaintiff was seated should be rejected by this Court. As noted above, based on the evidence there was nothing about the operation of the bus in its movement out of the bus stop that can be characterized as negligent. Moving the bus out of the bus stop and changing lanes does not constitute negligence. What it does constitute is normal city travel. As noted above, plaintiff was not caused to fall down as a result of the bus traveling out of the bus stop. She was able to hold onto the chair of the bus with only one hand. She was then able to immediately walk back to the front of the bus to yell at the bus operator. She was also able to stop and talk to another passenger. Plaintiff's body did not even move a significant distance inside the bus and no other passengers were caused to fall as a result of the alleged take off out of the bus stop.

45. Moreover, any argument put forth by the plaintiff that the Defendant violated its own internal rules for moving the bus before plaintiff sat down can be given no weight by this Court because it constitutes a "higher duty than the duty to exercise reasonable care". (Rodriguez v. New York City Transit Authority, 273 A.D.2d 370, 371, 710 N.Y.S.2d 100 (2nd Dept. 2000); *see also* Hines v. New York City Transit Authority, 264 A.D.2d 506, 694 N.Y.S.2d 473 (2nd Dept. 1999); Caputo v. New York City Transit Authority, 86 A.D.2d 883, 447 N.Y.S.2d

535 (2nd Dept. 1982).

46. There is no objective evidence that the movement of the bus out of the bus stop caused a jerk or lurch that was sudden, unusual, and violent. Urquhart v. New York City Transit Authority, 85 N.Y.2d 828. Therefore, as a matter of law, the Defendant did not breach a duty of care to the plaintiff, and her complaint should be dismissed. Plaintiff's claims for negligent employment, negligent hiring, negligent training and negligent supervision also must be dismissed as a matter of law.

Please see Defendants' supporting Memorandum of Law for a further discussion.

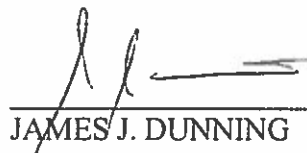
CONCLUSION

47. For all the reasons enumerated above, MTA LONG ISLAND BUS is entitled to summary judgment and dismissal of plaintiffs' complaint in its entirety.

Defendant reserves their right to defend this action as to all other issues, including proximate cause and the serious injury threshold, at the time of trial.

WHEREFORE, it is respectfully requested that the court issue an order granting MTA LONG ISLAND BUS' motion in its entirety.

Dated: New York, New York
April 14, 2015



JAMES J. DUNNING

RESP. APP 4

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ANGELA G. IANNACCI,

Justice

TRIAL/TAS, PART 11
NASSAU COUNTY

SORORAZAM BETHUNE,

Plaintiff(s),

MOTION DATE: June 12, 2015

MOTION SEQ.: 002

INDEX NO.: 10773/2012

-against-

MTA/LONG ISLAND BUS and "JOHN DOE" first
and last names being fictitious said party intended to be
the bus operator of the bus,

Defendant(s).

The following papers read on this motion:

Notice of Motion/Order to Show Cause	1
Memo of Law	2
Affirmation in Opposition	3
Reply Affirmation	4

The motion by the defendant for an order granting it summary judgment dismissing the complaint, is determined as follows:

The defendant has failed to establish its entitlement to judgment as a matter of law because it failed to present any evidence that the bus driver operating the bus at the time of the alleged incident was free of negligence (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In any event, the plaintiff submitted sufficient evidence to create a triable issue of as to whether her fall was caused by a sudden and violent jerking motion of the bus (*Urquhart v New York City Transit Auth*, 85 NY2d 828 [1995]).

Accordingly, the motion is denied

This constitutes the decision and order of the court

Dated: July 6, 2015


Angela G. Iannacci, J.S.C.

ENTERED

JUL 08 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE

RESP. APP 5

SUPREME COURT OF THE STATE OF NEW YORK

ORIGINAL

COUNTY OF NASSAU : TRIAL TERM PART 8

-----X

SORORAZAM BETHUNE, : Index No.
10773/12

Plaintiff, :

-against- :

MTA/LONGISLAND BUS and "JOHN DOE", first:
and last name being fictitious, said Precharge/
party intended to be the bus operator of: Openings/
the bus, S. Bethune/
: J. Epstein

Defendants. :
-----X

100 Supreme Court Drive
Mineola, New York 11501
November 5 and 6, 2015

B e f o r e :

HON. THOMAS FEINMAN,

Justice, and a Jury

A p p e a r a n c e s :

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BONNIE LEVINE, CSR., RMR.,
Official Court Reporter

1 to find out whether the person that she thought she
2 remembered was this Plaintiff. She said she could do
3 that by looking at her records, which she would not do
4 pending your Honor making a ruling.

5 THE COURT: I give a general ruling that
6 they're not to do any private investigation, et cetera,
7 and that's it.

8 MR. JACKSON: That's fine. That's good, Judge.
9 Thank you.

10 MR. PAGLINO: May I just --

11 THE COURT: Yes. Go real quick.

12 THE PLAINTIFF: Excuse me.

13 THE COURT: Don't raise your hand during the
14 trial, don't say anything during the trial until you're
15 called to the stand. I'm not going to take any
16 interruptions from you. If you want to accept the offer,
17 you can talk to your attorney. I'll give you until the
18 jury comes up. You do not interrupt my trial in any way,
19 shape or form. Do you want to talk to your attorney?

20 THE PLAINTIFF: I just wanted to get water,
21 your Honor.

22 THE COURT: Oh. Go ahead. You don't have to
23 stay. You can come and go as you please until you're on
24 the stand.

25 MR. JACKSON: Tell her she can sit here

1 precharge, and then you'll do your openings, and they
2 can't come in. All witnesses are outside except for
3 parties.

4 MR. PAGLINO: True, he's not a party. It's
5 John Doe.

6 Let me tell the MTA that we're proceeding.

7 MR. JACKSON: Your Honor, I have a request to
8 make about your speaking to the jury, but I can wait.

9 THE COURT: You have a request about me
10 speaking to the jury? What request do you have?

11 MR. JACKSON: In connection with the first
12 alternate, your Honor, she was a Nassau County employee.

13 THE COURT: Okay.

14 MR. JACKSON: And when questioned she said --

15 THE COURT: You picked her, I didn't. She's on
16 the jury.

17 MR. JACKSON: She's on the jury, your Honor,
18 but she -- I don't think the jurors understand this. She
19 said she thought she recognized the name of the
20 Plaintiff, but that wasn't enough for me to keep her out,
21 and she agreed --

22 THE COURT: I'm not making any inquiries.

23 MR. JACKSON: I don't want you to.

24 THE COURT: What do you want me to do?

25 MR. JACKSON: I want you to tell her not to try

1 (indicating) if she wants to.

2 THE COURT: She cannot sit there.

3 MR. JACKSON: She cannot?

4 THE COURT: She cannot.

5 MR. JACKSON: Okay.

6 THE COURT OFFICER: Jury entering.

7 (Whereupon, the jury panel entered the
8 courtroom.)

9 THE CLERK: Is the jury satisfactory to the
10 Plaintiff?

11 MR. JACKSON: It is.

12 THE CLERK: Satisfactory to the Defendant?

13 MR. PAGLINO: Yes.

14 THE CLERK: Jurors, please rise and raise your
15 right hands.

16 (Whereupon, the jury panel was sworn by the
17 Clerk of the Court.)

18 THE COURT: I'm going to pronounce your name,
19 and correct me if I mispronounce it, because if I
20 mispronounce it, you don't correct me, that's the name
21 you're going to be called throughout the whole trial.

22 Ms. Dengel?

23 Ms. Gatti?

24 Ms. Lutzker?

25 Ms. Geisel?

1 towards the chair.

2 Q Okay. And was the seat you were walking toward on
3 the driver's side of the bus or on the other side of the bus?

4 A Well, facing the back of the bus it was on the left
5 aisle.

6 THE COURT: Is it on the same side as the
7 driver or the side away from the driver?

8 THE WITNESS: It was on the other side.

9 THE COURT: The side away from the driver?

10 THE WITNESS: Yes.

11 THE COURT: So the right-hand side of the bus.

12 THE WITNESS: The rows on the other side.

13 THE COURT: Okay.

14 Q And what happened next.

15 A Well, I was around handicapped seats when the bus
16 suddenly, violently, it was like rattling, just took a sharp
17 turn to next left lane and then the other left lane. It went
18 -- after that he was going too fast on Old Country Road.

19 Q I'm sorry?

20 A What happened, I fell -- okay.

21 MR. JACKSON: Your Honor, I couldn't hear what
22 she said.

23 THE COURT: Well, you know what? I can't keep
24 repeating the testimony. You've heard her. I'm not
25 going to have her repeat her testimony again.

1 You want to read it back, Bonnie.

2 (Whereupon, the previous answer was read back.)

3 MR. JACKSON: Would you ask the witness when
4 she does --

5 THE COURT: What?

6 MR. JACKSON: -- when Ms. Bethune does begin to
7 speak again --

8 THE COURT: I am not going to tell her -- I've
9 told you many times to keep your voice up. If you don't
10 keep your voice up the jury's not going to hear it. If
11 the jury doesn't hear it, it makes no impact.

12 THE WITNESS: I'm sorry.

13 THE COURT: So if you want to yell, we'll take
14 that, but they have to hear you. Okay?

15 THE WITNESS: I'm sorry.

16 So can I answer him?

17 THE COURT: Once again, I just asked the
18 reporter to read it back and you interrupted me.

19 Would you please read it back.

20 (Whereupon, the previous answer was read back.)

21 THE COURT: At this point in time, members of
22 the jury, we're going to recess, and we're going to come
23 back at 2 o'clock, so you be back here at 1:30, you'll be
24 brought up at quarter to 2 and we'll start promptly at 2.

25 In the meantime, don't come to any conclusions

1 of the case, not even in the confines of your own mind.

2 Anyone attempts to discuss the case, please
3 report it to the Court and not the other jurors.

4 Have a pleasant lunch.

5 (Whereupon, the jury panel exited the
6 courtroom.)

7 THE COURT: Off the record.

8 (Whereupon, a discussion was held off the
9 record.)

10 THE COURT: Be outside my courtroom at ten to 2
11 and we will continue promptly at 2 o'clock.

12 MR. PAGLINO: May I renew that motion, Judge?

13 THE COURT: Let me hear the motion real fast.
14 Ask Cathy to come in.

15 THE CLERK: Want the witness to step down?

16 THE COURT: No. She can stay there.

17 THE WITNESS: Do you want me to leave?

18 THE COURT: You can stay, if you want, or you
19 can leave, if you want.

20 THE WITNESS: No. I'll stay.

21 THE COURT: Stay until we're done and then you
22 can walk at your own pace.

23 There are very few motions made for a defective
24 opening.

25 MR. PAGLINO: I know, your Honor.

1 THE COURT: I think that the better course
2 would be to --

3 MR. PAGLINO: Move for a directed verdict?

4 THE COURT: -- wait until she testifies,
5 because the remedy for a defective opening would be just
6 to allow him to reopen.

7 MR. PAGLINO: Okay. Then I'll wait, Judge.

8 THE COURT: Okay.

9 MR. PAGLINO: Thank you.

10 THE COURT: Thank you.

11 See you outside at ten to 2.

12 You may step down, if you wish.

13 THE WITNESS: Thank you.

14 THE COURT: Or you can sit there.

15 THE WITNESS: Thank you.

16 (Recess held. After recess:)

17 THE COURT OFFICER: Jury entering.

18 (Whereupon, the jury panel reentered the
19 courtroom.)

20 THE COURT: Okay. I remind you you're still
21 under oath.

22 You may continue to inquire, Mr. Jackson.

23 Q Ms. Bethune, I want to go back a moment in time to
24 the time when you were standing by the bus stop. Did you do
25 anything while you were standing by the bus stop waiting for

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU : TRIAL TERM PART 8

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SORORAZAM BETHUNE,	:	Index No.
	:	10773/12
Plaintiff,	:	
-against-	:	
MTA/LONG ISLAND BUS and "JOHN DOE,"	:	
first and last name being fictitious,	:	Summations/
said party intended to be the bus	:	Charge/
operator of the bus,	:	Verdict
	:	
Defendants.	:	
	:	

-----x

100 Supreme Court Drive
Mineola, New York 11501
November 6, 2015

B e f o r e :

HON. THOMAS FEINMAN,

Justice, and a Jury

(Appearances as previously noted.)

* * * * *

THE COURT: Let the record reflect that we had a charging conference yesterday on both the verdict sheet and on the request to charge, and as of yesterday there was no additional request to charge, nor were there any exceptions; am I correct?

1 on the law, you have the right to return to the courtroom
2 for the purpose of having such testimony read to you or
3 having such question answered.

4 I've now outlined for you the rules of law that
5 apply to the case and the processes by which you will
6 weigh the case and decide the facts. In a few moments
7 you will retire to the jury room for your deliberations.
8 Traditionally, Juror Number 1, Ms. Dengel, will be your
9 foreperson. Your first order of business in the jury
10 room will be the election of a foreperson. In order your
11 deliberations may proceed in an orderly fashion, you must
12 have a foreperson, but of course, his or her vote is
13 entitled no no greater weight than that of any other
14 juror. Your function -- to reach a fair decision from
15 the law and the evidence --and is an important one. When
16 you're in the jury room, listen to each other, and
17 discuss the evidence and issues in the case among
18 yourselves. It is the duty of each of you, as jurors, to
19 consult with one another, and to deliberate with a view
20 of reaching agreement on a verdict, if you can do so
21 without violating your individual judgment and your
22 conscience. While you should not surrender
23 conscientious convictions of what the truth is and of the
24 weight and effect of the evidence and while each of you
25 must decide the case for yourself and not merely consent

1 to the decision of your fellow jurors, you should examine
2 the issues and the evidence before you with candor and
3 frankness, with proper respect and regard for the
4 opinions of each other. Remember in your deliberations
5 the dispute between the parties is, for them, a very
6 important matter. They and the Court rely upon you to
7 give full and conscientious deliberation and
8 consideration to the issues and evidence before you. By
9 so doing, you carry out to the fullest your oaths as
10 jurors to truly try the issues of this case and render a
11 true and just verdict.

12 Now, let me give you a few more instructions.

13 If you need any of the testimony read back,
14 people say, Well, when the judge reads this maybe we
15 should ask for something to be read back so this way it
16 looks like we're really doing our job. Quite the
17 contrary. It means you understood everything and you
18 don't need it read back. But if you do want something
19 read back, don't hesitate to ask for it, but if you ask
20 for the testimony of so and so, we're going to read you
21 back the entire testimony unless you put in a little
22 thing saying, I want to know specifically what was said
23 about a little portion of the testimony. What would
24 happen then is anytime that happens -- and I'm not saying
25 it should happen or could happen or needs to happen,

1 Ms. Dengel or the foreman will write a note with the date
2 and time on it, give the specific question to our court
3 officer who will bring it back into the courtroom. I
4 then read the question to both attorneys, we then have
5 the reporter research the record to find that portion, we
6 then call you back in and then we read that portion to
7 you and then we let you continue to deliberate. So if
8 you don't need it, don't ask for it. We don't judge you
9 based upon what you ask for or don't ask for.

10 Similarly, I've had juries that have been out
11 one minute, I've had juries that have been out one hour
12 and one day. We don't judge you on how long it takes you
13 to come to a conclusion. If it's clear in your mind,
14 well then, come back with a quick verdict. If it's not,
15 discuss it and take whatever time you need. If, however,
16 you do not come back by noon, we will break for lunch and
17 you will not be entitled to come back to give us your
18 decision at least until 2 o'clock, should you continue to
19 deliberate. If it becomes 4 o'clock and you haven't come
20 to a verdict, you'll come back on Monday. So, once
21 again, if it takes you thirty seconds, a minute, an hour,
22 a day, take what you need. We don't say, Well, you know,
23 boy, they came back really quick, or, They took really
24 long. Doesn't matter to us. What matters in your mind
25 is what effect the evidence had on you, what you're

1 persuaded by and what you believe.

2 There is no evidence to send in with them so I
3 don't have to ask for your permission to do that.

4 The only testimony you have is of the two
5 witnesses and what was read by the depositions.

6 Look at the verdict sheet when I give it to
7 you. You will see that there is a question and then
8 there is a direction.

9 Question 1 was, Was the Defendant negligent?
10 If you say yes, then you go on to another question. If
11 you say no, the case is over. It will say, Don't go any
12 further.

13 Question 2 will be, Was the Defendant's
14 negligence a substantial factor in causing the accident?
15 This is only if you find yes to the first question. If
16 you say no, once again, the case is over. If you say
17 yes, then you go on to the third question, which says --
18 okay. If you found that the Plaintiff was negligent and
19 that it was a substantial factor in causing the accident,
20 was the Plaintiff also negligent in some regard, and
21 you'll say yes or no, and there's a direction. And then
22 it will say, Question 4, Was that also a substantial
23 factor, and then, finally, if you find that there's
24 negligence on both sides -- and that doesn't mean that
25 you should -- you'll then apportion and it comes up to a

1 hundred percent. All right?

2 Ed.

3 Unfortunately, alternate jurors, or
4 fortunately, you don't get to go in and deliberate.
5 You're segregated in a separate room. You're not part of
6 the conversations. I can't dismiss you because of
7 something that may or may not happen. But remember the
8 direction I gave you before. You're not to get sick or
9 die during my trial. I'm holding you to that.

10 And what will happen is when the jury comes
11 back with a verdict, we'll bring you in, you'll sit
12 there, I'll dismiss you from your jury duty, but you'll
13 sit right there and we'll take the verdict.

14 Go and render a true and just verdict.

15 ALTERNATE JUROR NO. 1: Can the alternate
16 jurors talk amongst ourselves?

17 THE COURT: Not about the case.

18 ALTERNATE JUROR NO.1: That's what I wanted to
19 know. Okay.

20 (Whereupon, the jurors exited the courtroom to
21 begin their deliberations.)

22 THE COURT: Okay, gentlemen. I expect either
23 way a quick verdict, because there are only two witnesses
24 and no evidence to evaluate, so either believe or
25 disbelieve somebody, but we'll see.

1 MR. JACKSON: Yes, Judge.

2 MR. PAGLINO: Judge, are you taking any
3 motions?

4 THE COURT: You know I'm going to reserve, but
5 go ahead.

6 MR. PAGLINO: I move to dismiss Plaintiff's
7 case for failing to make out a prima facie case of
8 negligence against Defendant MTA Bus.

9 THE COURT: In what manner?

10 MR. PAGLINO: That the claim that Plaintiff
11 made of the movement of the bus was not a sudden or
12 violent jerk that could be actionable under PJI 1:60 --
13 2:165 and the case law supporting that --

14 THE COURT: What did she say? What did she say
15 was the movement of the bus; it jumped?

16 MR. PAGLINO: That it jumped from the right
17 lane to the middle lane to the left lane, all within one
18 second, and exceeded or came to the speed of 40 to 45
19 miles per hour, which, Judge, you may take judicial
20 notice of is impossible for a bus to do.

21 THE COURT: Mr. Jackson.

22 MR. JACKSON: I think, your Honor, the witness
23 testified that the bus jerked or lurched away from the
24 curb --

25 THE COURT: I don't believe I heard the term

1 jerked or lurched. I believe I heard the term "jumped".

2 MR. JACKSON: I think she said jerked or
3 lurched, your Honor, but the record will bear me out or
4 not, but, in any event, I think within normal parlance
5 the word "jumped" as she described the conduct of the
6 driver turning the wheel extremely to the left and the
7 bus moved up quickly, I won't say speedily, moved out
8 quickly, and she was thrown -- she was thrown toward her
9 seat as she was identifying the seat to which she was
10 going to go, and as a result she said she was injured and
11 flipped around. She saw there was no reason for the bus
12 driver to do what he did; no pedestrian traffic, no
13 vehicular traffic, nothing to avoid, the weather was
14 good, I think the bus driver was negligent.

15 THE COURT: There was a case, Mr. Jackson, that
16 I'm sure you're familiar with, it says that it is well
17 established that in order to establish a prima facie case
18 of negligence against a common carrier for injuries
19 sustained as a passenger when such vehicle comes to a
20 halt the Plaintiff must establish that the stop caused a
21 jerk or lurch that was unusual or violent. Proof that
22 the stop was unusual or violent must consist of more than
23 a mere characterization of the stop in those terms by the
24 Plaintiff. Here we're not talking about a stop. We're
25 talking about a start.

1 MR. JACKSON: Start.

2 THE COURT: So I would imagine they're probably
3 interchangeable. The Court of Appeals in Urguhart found
4 the Plaintiff's testimony that the swiftly moving bus
5 which stopped suddenly propelling his body down its
6 entire length was more than a mere characterization of
7 the stop. Such objective evidence of a forceful stop was
8 sufficient to an inference that the stop was
9 extraordinary and violent. Tell me what we have here to
10 establish that.

11 MR. JACKSON: We have an extraordinary and
12 violent departure from the curb.

13 THE COURT: No, no. That's the mere
14 characterization. In this case she said -- the person
15 said that the body was propelled down the entire length
16 of the bus.

17 MR. JACKSON: She wasn't propelled down the
18 entire length of the bus. She was propelled from the
19 fare box to the seat which she missed grabbing the
20 handle.

21 MR. PAGLINO: No, your Honor, she was not
22 propelled from the -- she had walked a number of steps,
23 that she was not propelled from the fare box to the seat.
24 No testimony whatsoever.

25 MR. JACKSON: Propelled from between the fare

1 box and the seat toward the seat, missing the seat,
2 grabbing the handle, turning around, seeing what was
3 going on, and there was nothing for the bus driver to
4 avoid.

5 THE COURT: Okay. All right. Decision
6 reserved, gentlemen.

7 MR. PAGLINO: Thank you, your Honor.

8 MR. JACKSON: Thank you, your Honor.

9 (Recess held. After recess:)

10 THE COURT: You want to mark this as a Court
11 Exhibit?

12 (Above-referred to item marked as Court Exhibit
13 Number II.)

14 THE COURT OFFICER: Jury entering.

15 (Whereupon, the jury panel reentered the
16 courtroom.)

17 THE FOREPERSON: (Handing.)

18 THE CLERK: (Handing.)

19 THE COURT: (Handing.)

20 Okay. Take the verdict.

21 THE CLERK: Sure. Before we do, Ms. Bruck and
22 Ms. McNair, you are discharged from service, but you can
23 sit right there.

24 THE COURT: The alternates have been excused.
25 Please take the verdict.

1 THE CLERK: Will the foreperson please rise.

2 Has the jury reached a verdict?

3 THE FOREPERSON: Yes.

4 THE CLERK: As to Question Number 1: Was the
5 Defendant negligent?

6 What is your verdict?

7 THE FOREPERSON: No.

8 THE CLERK: Was that verdict unanimous?

9 THE FOREPERSON: Yes.

10 THE CLERK: Thank you.

11 Please be seated.

12 THE COURT: Okay. Thank you very much, members
13 of the jury. What I'd like to do is talk to each one of
14 you together in my chambers, if you don't mind, for about
15 five or ten minutes, and if you would bring them back
16 there, Ed, I'll join them in a minute.

17 THE COURT OFFICER: Yes, I will, Judge.

18 The verdict sheet you just give to the clerk.

19 THE FOREPERSON: Thank you very much (handing).

20 THE CLERK: Okay. Sure.

21 (Whereupon, the jury panel exited the
22 courtroom.)

23 THE COURT: All of the motions that I reserved
24 decision on are denied because we have a verdict.

25 MR. PAGLINO: Thank you, your Honor.

1 THE COURT: Mr. Jackson, thank you very much.

2 MR. JACKSON: Thank you, your Honor.

3 THE COURT: Mr. Paglino, thank you.

4 MR. PAGLINO: Thank you very much, your Honor.

5

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* * * * *

7

CERTIFIED THAT THE
FOREGOING IS A TRUE AND
ACCURATE TRANSCRIPT OF THE
ORIGINAL STENOGRAPHIC
MINUTES IN THIS CASE.

8

9

10

Bonnie Levine

11

BONNIE LEVINE, CSR., RMR.,
Official Court Reporter

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RESP. APP 6

LIB 9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Index No.: 10773/12

Plaintiff,

Assigned to: Hon. Thomas Feinman

-against-

**AFFIRMATION IN OPPOSITION
TO PLAINTIFF'S ORDER TO
SHOW CAUSE**

MTA/LONG ISLAND BUS and "JOHN DOE" first and
last name being fictitious said party intended to be the
bus operator of the bus,

Return Date: 1/19/16

Defendants.

-----X

MICHAEL J. PAGLINO, an attorney duly admitted to practice in the Courts of the State of New York hereby submits the following Affirmation in Opposition to Plaintiff's Order to Show Cause; seeking to set aside the verdict of the jury after a trial of this matter in favor of the Defendant on the grounds that the verdict was against the weight of the evidence, returning this matter for assignment for a new "bench" trial and for such other and further relief as this Court deems proper; upon information and belief and under the penalty of perjury:

1. I am a member of the firm of ARMIENTI, DeBELLIS, GUGLIELMO & RHODEN, LLP., attorneys for Defendant, MTA/LONG ISLAND BUS (hereinafter "MTA"), in the within action and was also trial counsel in connection with the trial of this matter, and as such and fully familiar with the facts and circumstances of this action; my information and belief arising out of the file maintained by this office, by my participation in the defense in this action and by my participation in the trial of this action.

2. This Affirmation is submitted in Opposition and on behalf of MTA to Plaintiff's Order to Show Cause purportedly pursuant to CPLR §4404 (although Plaintiff submits no authority

in support of and/or within the entire breath of her application) to set aside the verdict in favor of Defendant as against the weight of the evidence, and setting this matter for a new bench trial together with such other and further relief as this Court may deem just and proper.

3. This is an action for damages in connection with personal injuries allegedly sustained by Plaintiff, SORORAZAM BETHUNE (hereinafter "Plaintiff") while allegedly a passenger on an MTA Bus on August 24, 2011.

4. It is respectfully submitted that Plaintiff is not entitled to an Order setting aside the verdict as against the weight of the evidence nor is Plaintiff entitled to a new bench trial as Plaintiff's within Motion is untimely. However, should the Court elect to hear Plaintiff's within Order to Show Cause notwithstanding its untimeliness, Plaintiff has in no way shown and cannot show that the jury could not have reached its verdict by any fair interpretation of the evidence. Therefore, and as will be more aptly and fully set forth below, Plaintiff's Order to Show Cause must be denied in its entirety.

5. Further, Plaintiff's Order to Show Cause is replete with bald accusations and mistruths unsupported by the record of the trial in this matter. Plaintiff's rambling allegations and irrelevancies are even mostly unsupported by her own counsel's Affirmation which is unsigned. Therefore, Plaintiff's Order to Show Cause must be denied as it makes no evidentiary showing that the jury could not have reached its verdict by a fair interpretation of the evidence.

6. The within action was commenced against MTA by the filing and service of a Summons and Complaint by Plaintiff on or about August 23, 2012. Annexed hereto as **Exhibit "A"** is a copy of Plaintiff's Complaint. Issue was joined by MTA by service of its Answer on or about November 13, 2012. Annexed hereto as **Exhibit "B"** is a copy of MTA's Answer.

7. The facts of the case, as they pertain to Plaintiff's Order to Show Cause are rather

simple, except that in a feigned attempt to set aside the jury's verdict, seeks to employ an array of red herrings borne of misstatements of fact unsupported by the record. In fact, Plaintiff failed to procedurally preserve any objections it may have had during the trial, notwithstanding their lack of any factual, legal or procedural basis. Plaintiff alleges that on August 24, 2011 while boarding a westbound N79 bus on Old Country Road across from Costco she was caused to be injured by reason that within a second or two the bus "jumped" to 45 miles per hour while changing lanes causing Plaintiff's leg to come into contact with the base of the seat she was holding onto. The case was tried before Honorable Thomas Feinman on November 5, and 6, 2015. No eyewitnesses to the event were identified or called by Plaintiff to testify at trial. Other than the Plaintiff herself, no fact witnesses testified as to the specific manner of her accident or incident. No red herrings contained in either Plaintiff's counsel's affirmation or Plaintiff's Affidavit can change this fact. As such, within minutes of the jury retiring to deliberate, the jury found by a fair preponderance of the evidence presented that the MTA was not negligent. Plaintiff, in her Order to Show Cause fails miserably to show that the verdict is contrary to the weight of the evidence sufficient to support a disturbance of the verdict.

PLAINTIFF'S ALLEGATIONS IN HER ORDER TO SHOW CAUSE ARE UNSUPPORTED BY THE RECORD OF THE TRIAL OF THIS MATTER

8. Initially, it must be stated that Plaintiff's application should be denied in its entirety and outright as Plaintiff's Order to Show Cause is untimely. CPLR §4405 sets forth as follows:

"A motion under this article shall be made before the judge who presided at the trial within fifteen (15) days after decision, verdict or discharge of the jury. The Court shall have no power to grant relief after argument or submission of an appeal from the final judgment."

9. A motion on notice is made when a notice of the motion or an Order to Show Cause is served. See, NY CLS CPLR §2211. The verdict in the above-captioned matter was rendered on

November 6, 2015. The Order to Show Cause was served on November 30, 2015, a full twenty-four (24) days after the verdict was rendered. Therefore, Plaintiff's Order to Show Cause to set aside the verdict in this matter should be denied as untimely.

10. However, should the Court decide to hear Plaintiff's Order to Show Cause, Plaintiff's Order to Show Cause must fail for a variety of other reasons. For instance, Plaintiff's demonstration that the Court denied Plaintiff's request for a missing witness charge is woefully insufficient to support Plaintiff's claim that the jury's verdict should be set aside as against the weight of the evidence. First of all, Plaintiff's request for a missing witness charge with respect to former MTA employee Aubrey Greenidge was, once again, untimely. In Plaintiff's counsel's Affirmation at Paragraph 5, he fails to add that the charge conference was conducted after the close of all the evidence and after both parties rested. His request for the missing witness charge was made after the charge conference and moments before the jury entered to hear summations. Notwithstanding its untimeliness, the Court entertained the request. Rightfully so, the Court denied the request as it had nothing to do with a relevant issue in the case, namely Defendant's negligence or lack thereof. Plaintiff could have easily issued a subpoena to assure Mr. Greenidge's appearance in Court, but took no measures to do so.

11. In the interest of brevity, MTA will refer to excerpts of the trial testimony and annex those portions of the transcript. Annexed hereto as **Exhibit "C"** are excerpts of the trial transcript. The Court did not stand in Plaintiff's counsel's way with respect to referring that Plaintiff spoke to Mr. Greenidge as it was part of the record (See, **Exhibit "C"**, at pp. 112-113). In addition, annexed hereto as **Exhibit "D"** is a copy of an Affidavit from MTA Agency Counsel, Marlo Polese, Esq. wherein she indicates that Mr. Greenidge was no longer an employee of the MTA shortly after the subject occurrence and thus had no control over Mr. Greenidge. Therefore, this branch of

Plaintiff's Order to Show Cause fails to support any basis that the verdict should be set aside as against the weight of the evidence.

12. In addition, it is uncertain in his Affirmation what Plaintiff's counsel is alleging or requesting with respect to Plaintiff's inability to identify the bus operator. Both Plaintiff's counsel and his client insist on introducing deposition testimony that was not part of the trial, seeking to introduce testimony that the MTA somehow suggested to Plaintiff that the bus operator was Latino? As the record reflects, the only testimony introduced at the trial was with respect to impeaching Plaintiff's prior inconsistent statement at an Examination Before Trial on March 18, 2004. Plaintiff testified at the trial, describing the bus operator to a "T", as follows: chubby; approximately 5' 3", 5' 4" or so; 52-53 years old at the time, and white. Plaintiff recalled giving those answers to the questions posed at a deposition conducted on March 18, 2014. See, Exhibit "C", at pp. 99-100. If Plaintiff claims she testified differently in a deposition relating to her prior claim against the MTA or at a 50-h Hearing, Plaintiff and her counsel could have introduced such testimony at trial. Plaintiff failed to do so. They introduced nothing. They cannot do so here. This is yet another "red herring", another "smoke screen" designed to refract from the real issue here, namely that Plaintiff woefully fails to meet her *prima facie* burden to set aside the verdict in this case. Incidentally, Mr. Epstein testified at the trial as follows:

Q. Incidentally, how old are you?

A. I am 57.

Q. And approximately, how tall are you?

A. I'm 5' 5".

See, Exhibit "C" at p. 88, ll. 13-16.

13. Further, Plaintiff's counsel is quick to add "[A]ccording to Plaintiff's Affidavit" she

felt "threatened" by Your Honor's attempt to mediate reasonable settlement negotiations prior to the commencement of the trial. These negotiations were not before the jury. Since Plaintiff's counsel was present during settlement negotiations, it is curious that he does not rely on his firsthand knowledge to make this assertion, presumably because he does not agree with Plaintiff's rendition of the "facts" as set forth in her Affidavit which will merit some discussion hereinbelow.

14. In addition, Plaintiff's counsel's Affirmation is unsigned. Plaintiff's presumption therein that she was "afraid" to convey to the Court that she was experiencing chest pains is preposterous.

15. Plaintiff never complained of having any medical issues, did not appear during the course of the trial to be in any type of distress while making demonstrative gestures and attempting to pass notes to her counsel, and certainly does not support her claim with any medical evidence. Once again, Plaintiff's histrionics must not be condoned by this Honorable Court.

16. Incidentally, Plaintiff offers no evidence during the course of the trial that the Court refused Plaintiff's request to speak with counsel. As a matter of fact, Justice Feinman went out of his way to suggest Plaintiff could speak with counsel before the jury was seated prior to the commencement of the trial. See, Exhibit "C" at p. 7. Plaintiff could also have spoken with her counsel during the two- hour lunch break that was soon to follow. Counsel knows full well that the parties are not permitted to sit at the counsel table during the trial. Id. at p. 8.

17. Which brings us to Plaintiff's Affidavit. At the outset, the Affidavit should not be considered as it is purported to be made "in opposition to Your Honor granting summary judgment to the Defendant." See, Plaintiff's Affidavit at p. 1. However, notwithstanding the above, should the Court still consider Plaintiff's Affidavit it too fails to demonstrate that the verdict should be set aside as against the weight of the evidence.

18. With respect to the settlement negotiations alleged to in Plaintiff's opening paragraphs of her Affidavit, while your Affirmant was not privy to any caucuses among the Court, Plaintiff's counsel and Plaintiff, Plaintiff was never offered the sums she suggests in settlement of this matter. This, coupled with the fact that her own attorney does not support her assertions with respect to the settlement caucuses in his Affirmation leads to the presumption that her other allegations are at best exaggerated. The offer conveyed to Plaintiff is properly set forth by the Court on the record. See, Exhibit "C" at p. 4 ll 13-15. Further, on November 6, after Plaintiff had already testified on rebuttal, after the close of all the evidence, after the charge conference was completed and just before the jury was about to reenter for summations and to be charged, Plaintiff is presumably alleging here that not being permitted to retake the stand for a third time to testify as to what she may have testified to at a prior deposition in her previous case against the MTA was somehow improper. Plaintiff had an opportunity to present deposition testimony on her case in chief. Plaintiff did not even offer deposition testimony on rebuttal but only now wants to "testify regarding" her Examination Before Trial in the prior case. There is no testimony to support her claim that the MTA was negligent as a common carrier in the present case. This was just again another red herring. See, Plaintiff's Affidavit at ¶ 7 and Exhibit "C" at pp. 113-114.

19. Plaintiff's bald allegation contained in ¶9 of her Affidavit, that Justice Feinman was biased against her, is unsupported by her own attorney and the record. Bald, unsupported presumptions, even contained in an Affidavit, are not treated as facts. Plaintiff's "quotes" contained in ¶¶ 10-13 are, not only hearsay, but are wholly unsupported by any facts in the record of the trial. Plaintiff does not refer to any portion of the trial transcript throughout any portion of her Affidavit because there is no credible evidence to support her claims.

20. The allegations set forth in Paragraphs 14 and 15 of Plaintiff's Affidavit contain

both a mistruth and a bold face lie. With respect to Paragraph 14 not only did Your Honor offer that Plaintiff speak to her attorney before the jury was seated prior to the commencement of the trial, but Plaintiff was only asking for water at the time. See, Exhibit "C" at p. 7. With respect to Paragraph 15, not only did Judge Feinman not humiliate Plaintiff's counsel with respect to his apparent disability, a cheap shot by Plaintiff if there ever was one, but consented to Plaintiff's counsel being able to remain seated during the entire course of the trial, which he did without issue. Id. at pp. 20-21, 123.

21. Another mistruth is contained in Paragraph 16 of Plaintiff's Affidavit as Aubrey Greenidge was not "fired" but took a position with NICE once the Nassau County bus routes were privatized. See, Exhibit "D". The Exhibit 3 referred to by this paragraph of Plaintiff's Affidavit also must not be considered as it is not part of the trial record. The Exhibit 4 referred to as Plaintiff's counsel's letter to the MTA must also not be considered as it was not marked as an exhibit at trial and therefore not part of the record. The medical records contained in Exhibits 1 and 2 must also be rejected as same are not in admissible form and this was a liability trial only.

22. With respect to Paragraph 18 of Plaintiff's Affidavit, what other attorneys may have told her is hearsay. Besides, it is not part of the record and therefore should not be considered here. In addition, the bus operator never testified that the subject bus route, the N79, had 3 to 4 drivers "every hour." That is preposterous. Mr. Epstein, the bus operator testified on this issue, on cross-examination, as follows:

THE COURT: Hold it. During a given afternoon or in total of all the drivers? How many shifts are there with respect to the N79?

THE WITNESS: 3 shifts.

THE COURT: 8 hours each?

THE WITNESS: Yes.

THE COURT: So how many other drivers could have been that day other than you?

Two others, correct?

THE WITNESS: Yes.

See, Exhibit "C" at p. 91.

23. In Paragraph "19" of her Affidavit Plaintiff continues to mischaracterize testimony. She never refers to chapter and verse of the trial transcript. As a matter of fact her own attorney objected to this line of questioning that she mischaracterizes here. It is ludicrous. Exhibit "5" which Plaintiff refers to as her Affidavit opposing an earlier Motion for Summary Judgment also must not be considered here as it is not part of the trial record.

24. In Paragraphs 22 and 23, again Plaintiff mischaracterizes her testimony in narrative form without referring to parts of the record. She makes her own summation in lieu of her attorneys with respect to facts as she would have liked them to be played out. Plaintiff cannot be permitted to make another summation. Her quotes are unsupported by references to any portion of the trial transcript and therefore must not be considered by this Honorable Court.

25. Once again, unsupported characterizations contained in an Affidavit are not admissible. Plaintiff presents absolutely no proof that Justice Feinman committed misconduct or "obstructed justice". During several points during the trial it was Plaintiff who committed misconduct with her utterances. For instance, during cross-examination of Plaintiff she blurted out the following with no question pending:

THE WITNESS: I'm sorry. No, he wasn't objecting.

THE COURT: Excuse me?

THE WITNESS: I'll be quiet. I didn't know why he was not,

THE COURT: You said you will be quiet but you keep talking.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Continue please. Move on to another--.

Exhibit "C", at p. 78.

26. In addition, during cross-examination of the bus operator, Mr. Epstein, Plaintiff blurted out the following from where she was seated in the courtroom:

THE COURT: Hold on one second.

THE WITNESS: Mr. Jackson? Mr. Jackson? Excuse me. Can I speak to my attorney?

THE CLERK: Not right now.

THE WITNESS: Can I give him a note?

THE CLERK: Not now.

Exhibit "C" at p. 92.

27. While the Plaintiff sought to make up her own rules as the trial went along, the Court, properly would not condone it. For this, the Plaintiff accuses the Court of misconduct and obstruction of justice. It was Plaintiff who was the obstructionist by virtue of her own conduct. This the Court cannot condone and did not. Further, Plaintiff's unsupported characterizations and allegations on this issue failed to make out a *prima facie* case that the jury's verdict should be set aside as against the weight of the evidence or in the interest of justice. Justice Feinman even excused the jury for a minute to caution Plaintiff for making gestures and noises during Your Affirmant's summation. Id., at pp. 121-122.

28. The remaining portions of Plaintiff's Affidavit are also unsupported by the record or are just regurgitations of previous allegations therein. Any attempts by Plaintiff to interject

testimony with respect to her alleged injuries or disabilities must not be considered by the Court as this was a liability trial and they are not part of the record. Likewise, any references to an alleged loss of income must also not be considered. The jury has spoken and rendered a swift verdict. The Plaintiff has offered not one scintilla of evidence to set aside the verdict. Therefore, Plaintiff's entire Affidavit including the exhibits annexed thereto, which are not part of the record, must be set aside and not the jury's verdict which is clearly supported by the credible evidence. Incidentally, Plaintiff's counsel's Affirmation also must not be considered for the reasons set forth above, to be set forth below and because it is unsigned. Finally, Plaintiff quoting Your Affirmant at jury selection as she does in Paragraph 36 of her Affidavit is unconscionable as she was not even present. Therefore, for the reasons set forth above and as will be set forth hereinbelow, Plaintiff's Order to Show Cause to set aside the verdict and to reassign the matter for a "bench" trial must be denied in its entirety.

ARGUMENT

POINT I

PLAINTIFF'S ORDER TO SHOW CAUSE IS UNTIMELY

29. In the present case, the jury rendered its verdict on November 6, 2015. Plaintiff served her Order to Show Cause on November 30, 2015, twenty-four (24) days later. The statutory embodiment of the time within which a motion to set aside a verdict must be made is set forth in CPLR Rule 4405 as follows:

Rule 4405. Time and Judge before whom post-trial motion made.

A motion under this article shall be made before the judge who presided at the trial within fifteen (15) days after decision, verdict or

discharge of the jury. The Court shall have no power to grant relief after argument or submission of an appeal from the final judgment.

30. In the instant case, clearly Plaintiff's Motion is untimely. A motion to set aside a verdict is properly denied when it is not made within fifteen (15) days after verdict. See, Brzozowy v. ELRAC. Inc., 39 A.D.3d 451, 833 N.Y.S.2d 590 (2nd Dept., 2007); Bertan v. Richmond Memorial Hospital and Health Center, 131 A.D.2d 799, 517 N.Y.S.165 (2nd Dept., 1987). Therefore, Plaintiff's Order to Show Cause should be denied in its entirety as same was made untimely. Further, a motion on notice is made when a Notice of the Motion or an Order to Show Cause is served. NY CLS CPLR §2211. Therefore, since Plaintiff's Order to Show Cause was served 24 days after the verdict was rendered, Plaintiff's Order to Show Cause should be denied in its entirety as same was untimely.

POINT II

NOTWITHSTANDING THE ABOVE, THE DEFENSE VERDICT MUST NOT BE SET ASIDE BY THIS HONORABLE COURT

31. The statutory embodiment of the Court's authority to set aside a verdict is set forth in the CPLR Rule 4404 as follows:

Rule 4404. Post-Trial Motion for Judgment and New Trial

(a) Motion After Trial Where Jury Required

After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the Court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court.

32. Yet, such discretion is not unfettered. Indeed, this power to set aside a verdict does not imply that a trial court can set aside any verdict that it finds unsatisfactory or which it disagrees.

33. In the seminal case of Nicastro v. Park, 113 A.D.2d 129, 495 N.Y.S.2d 184 (2nd Dept., 1985), it is often been stated that a jury verdict in favor of a Defendant should not be set aside unless “the jury could not have reached the verdict on any fair interpretation of the evidence”. Nicastro, supra at 134. It is for the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses. Exarhouleas v. Green 317 Madison. LLC., 46 A.D.3d 854, 847 N.Y.S.2d 866 (2nd Dept., 2007).

34. Moreover, the successful party is entitled to a presumption that the jury adopted a reasonable view of the evidence. Bertelle v. N.Y. City Transit Auth., 19 A.D.3d 343, 796 N.Y.S.2d 415 (2nd Dept., 2005). In weighing credibility, the Second Department refused to disturb a defense verdict in favor of a rear-ending vehicle and dismissing the Complaint of the lead vehicle, notwithstanding a presumption in the lead vehicle’s favor. Chepel v. Meyers, 306 A.D.2d 235, 762 N.Y.S.2d 95 (2nd Dept., 2003).

35. In the instant case, the mechanism of the incident simply does not make sense. If, as the Plaintiff claimed, the bus jumped from a stopped position to 45 miles per hour instantaneously, all of the passengers would have been on the floor, or worse. The jury finding that the movement of the bus was not unnecessarily sudden, unusual or violent must not be disturbed. Negligence may not be presumed from the happening of an accident or incident. Plaintiff was still required to show that the MTA departed from the reasonable standard of care for a common carrier. The jury was permitted to believe the operator of the bus.

36. It is well settled that a jury verdict should not be set aside as contrary to the weight

of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence. See, Corcoran v. Peoples Ambulette Serv., 237 A.D.2d 402, 656 N.Y.S.2d 877 (2nd Dept., 1997). See, also, Buckenberger v. C. Clarke Constr. Corp., 208 A.D.2d 790, 618 N.Y.S.2d 392 (2nd Dept., 1994). Moreover, it is for the trier of fact to make determinations as to the credibility of witnesses and great deference is accorded to the fact finders, who had the opportunity to see and hear the witnesses. See, Salazar v. Fischer, 147 A.D.2d 470, 537 N.Y.S.2d 306 (2nd Dept., 1989). Therefore, Plaintiff's Order to Show Cause to set aside the verdict must be denied in its entirety.

POINT III

PLAINTIFF IS NOT ENTITLED TO A MISSING WITNESS CHARGE

37. Initially, it must be stated that Plaintiff is not entitled to a missing witness charge because the request was made untimely. The request was made untimely because it was made after the close of the evidence. Buttice v. Dyer, 1 A.D.3d 552, 767 N.Y.S.2d 784 (2nd Dept., 2003). See, also, People v. Whitlock, 95 A.D.3d 909, 943 N.Y.S.2d 227 (2nd Dept., 2012).

38. Further, a party seeking a missing witness charge must properly notify the Court that there is an uncalled witnesses believed to be knowledgeable about a material issue pending in the case. Taveras v. Martin, 54 A.D.3d 667, 863 N.Y.S.2d 475 (2nd Dept., 2008) [emphasis added]. By Plaintiff's own admission and pursuant to the Court's ruling at trial Mr. Greenidge, was not a witness to the alleged subject occurrence and therefore had no knowledge of a material issue. See, People v. Whitlock, at 911. Further, Plaintiff could not show that the witness was under the control of the MTA. See, Exhibit "D"; See, also, Rizos v. New York City Hous. Auth., 226 A.D.2d 323,

642 N.Y.S.2d 229 (1st Dept., 1996); See, also, People v. Davis, 48 A.D.3d 1255, 850 N.Y.S.2d 821 (4th Dept., 2008). Therefore, Plaintiff is not entitled to a missing witness charge.

POINT IV

PLAINTIFF IS NOT ENTITLED TO HAVE THE VERDICT SET ASIDE IN THE INTEREST OF JUSTICE

39. At no time during the course of the trial did Plaintiff's counsel move for a mistrial. Conclusory allegations, even in the form of an Affidavit, do not constitute sworn allegations of fact. They are just claims. Evidentiary facts must be supplied. People v. Houston, 2013 N.Y. Misc. LEXIS 2689, 2013 N.Y.Slip Op. 31367 (U) (Crim. Term., Kings Co., 2013). Moreover, Plaintiff's claim that judicial misconduct permeated the trial is unfounded and unsupported by the record. Rivera v. New York City Tr. Auth., 12 Misc. 3d 1167(a), 820 N.Y.S.2d 845 (Sup. Ct., N.Y. Co. 2006), *aff'd*, 54 A.D.3d 545, 863 N.Y.S.2d 201 (1st Dept., 2008). By failing to move for a mistrial on those grounds as asserted in her post-trial motion, Plaintiff waived her right to seek relief on those grounds pursuant to CPLR 4404(a). Mathews v. Coca-Cola Bottling of N.Y., 188 A.D.2d 590, 591 N.Y.S.2d 489 (2nd Dept., 1992).

40. At no time during the course of the trial did Plaintiff's counsel move for a mistrial. Thus, Plaintiff was foreclosed from the hindsight unsupported, unfounded claims that Plaintiff was deprived of a fair trial. Therefore, Plaintiff's unsupported, unfounded claims on grounds of judicial misconduct are woefully insufficient to support a motion to set aside a verdict on these grounds and Plaintiff's Order to Show Cause must therefore be denied in its entirety.

CONCLUSION

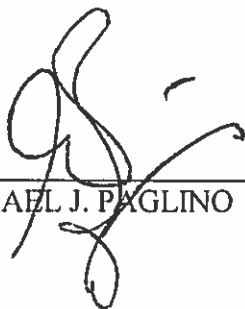
41. A verdict in favor of a Defendant should not be set aside as against the weight of the

credible evidence unless the preponderance in favor of the Plaintiff was so great that the finding in favor of the Defendant could not have been reached upon any fair interpretation of the evidence. Matthias v. Mary Immaculate Hospital, 274 A.D.2d 559, 712 N.Y.S.2d 391 (2nd Dept., 2000). There was sufficient evidence from which the jury found MTA was not negligent. Further, Plaintiff's unsupported, unfounded claims of misconduct are woefully insufficient to support a motion that Plaintiff was denied a fair trial. Moreover, Plaintiff did not seek a mistrial and may not be heard to complain Plaintiff was deprived of a fair trial. The jury in the trial of this action returning a verdict that MTA was not negligent in a matter of minutes forecloses any other claims Plaintiff may have to set aside its verdict.

42. Finally, Plaintiff's claim that the Court refused to allow Plaintiff's subpoenaed treating physicians to testify on her behalf if the trial had reached the damages portion could not be further from the truth. The Court only precluded Plaintiff's belatedly disclosed, while jury selection was ongoing, "expert" witnesses from testifying at trial on behalf of Plaintiff by virtue of MTA's Motion in Limine. See, Krimkevich v. Imperiale, 104 A.D.3d 649, 960 N.Y.S.2d 483 (2nd Dept., 2013); see, also, MTA's Motion in Limine annexed hereto, in its entirety as **Exhibit "E"**. The insufficiency of the notice was not even reached. (See, Exhibit "C", p. 2). Therefore, for the reasons set forth herein, Plaintiff's Order to Show Cause to set aside the verdict as against the weight of the evidence and for a new "bench" trial must be denied in its entirety.

WHEREFORE, MTA respectfully requests Plaintiff's Order to Show Cause to set aside the verdict and for a new trial be denied in its entirety and for such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
January 7, 2016



MICHAEL J. PAGLINO

RESP. APP 7

S

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present:

Hon. Thomas Feinman
Justice

SORORAZAM BETHUNE,

Plaintiff,

- against -

MTA/LONG ISLAND BUS and "JOHN DOE" first
and last name being fictitious said party intended to be
the bus operator of the bus,

Defendant.

TRIAL/LAS PART 6
NASSAU COUNTY

INDEX NO. 10773/12

X X X

MOTION SUBMISSION
DATE: 1/19/16

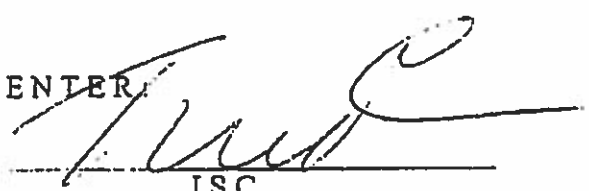
MOTION SEQUENCE
NO. 4

The following papers read on this motion:

Order to Show Cause and Affidavits.....	<u>X</u>
Affirmation in Opposition.....	<u>X</u>
Reply Affirmation.....	<u>X</u>

The plaintiff's untimely motion for an order vacating the determination of the jury in favor of the defendant on the grounds that such determination was inconsistent with the evidence offered at trial, and returning this matter for reassignment for a new bench trial of this matter is denied.

ENTER



J.S.C.

Dated: March 1, 2016

ENTERED

MAR 02 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE

RESP. APP 8

FILE COPY

LIB 9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Index No.: 10773/2012

Plaintiff,

-against-

**JUDGMENT WITH
NOTICE OF ENTRY**

MTA/LONG ISLAND BUS and "JOHN DOE" first
and last name being fictitious said party intended to
be the operator of the bus,

Defendants.
-----X

RECEIVED

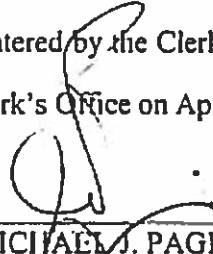
MAY 18 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE

COUNSELORS:

PLEASE TAKE NOTICE, the within is a true copy of a Judgment of the Supreme Court,
Nassau County signed on April 19, 2016, which was duly entered by the Clerk of the of the within
named Supreme Court, Nassau County in Nassau County Clerk's Office on April 22, 2016.

Dated: Mineola, New York
May 12, 2016


BY: MICHAEL J. PAGLINO, ESQ.

ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA LONG ISLAND BUS
170 Old Country Road-Suite 607
Mineola, NY 11501
(516) 877-1202

TO: The S.A. Jackson Law Firm, P.C.
Attorneys for Plaintiff
1402 Mitchel Field Way
Garden City, New York 17530

Sororazam Bethune
101 Washington Boulevard-Apt. 1325
Stamford, Connecticut 06902

Nassau County
Maureen OConnell
County Clerk
Mineola, NY 11501



0: 2016 00109497

Ref ID#: IN 12-010773

Instrument Number: 2016- 00109497

As

J01 - JUDGMENT-SUPREME COURT-MONEY

Recorded On: May 09, 2016

Parties: SORORAZAM BETHUNE

TO MTA/LONG ISLAND BUS

Num Of Pages: 7

Recorded By: ARMIENTI DEBELLIS

Comment

** Examined and Charged as Follows: **

J01 - JUDGMENT-SUPREME COU

000

Recording Charge:

0 00

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Clerk's Office For Nassau County NY

File Information:

Record and Return To:

Document Number 2016- 00109497

Receipt Number 253822

Recorded Date/Time May 09, 2016 11 48 38A

Book-Vol/Pg Bk-J VI-3995 Pg-277

Cashier / Station 0 CAG / NCCL-CCCYDP1



Maureen O'Connell

County Clerk Maureen O'Connell

LIB 9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Index No.: 10773/12

Plaintiff,

PROPOSED JUDGMENT

-against-

MTA/LONG ISLAND BUS and "JOHN DOE" first and
last name being fictitious said party intended to be the bus
operator of the bus,

Defendants.
-----X

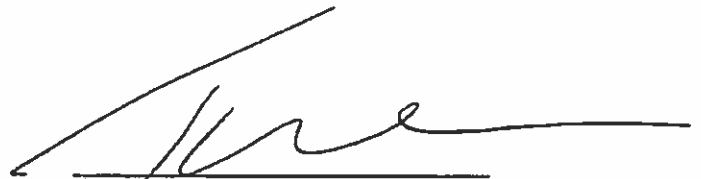
The above-entitled action having to come on for trial on the issue of liability before the Honorable Thomas Feinman and a jury at a Trial Term in the Supreme Court, Nassau County, 100 Supreme Court Drive, Mineola, New York, 11501 from November 5, 2015 through November 6, 2015, and the Plaintiff, Sororazam Bethune, having appeared by her attorneys Stewart A. Jackson, Esq., The S. A. Jackson Law Firm, P.C., 1402 Mitchel Field Way, Garden City, New York 11530, and the defendant, MTA/LONG ISLAND BUS, having appeared by its attorneys Armienti, DeBellis, Guglielmo & Rhoden, LLP by Michael J. Paglino, Esq. of 170 Old Country Road, Suite 607, Mineola, New York 11501, and the jury having rendered a verdict on November 6, 2015, in favor of the Defendant MTA LONG ISLAND BUS, finding no negligence or liability on their part with regard to the claims asserted by plaintiff herein.

1f
J.S.C.
Now, on motion of Armienti, DeBellis, Guglielmo & Rhoden, LLP, attorneys for Defendant MTA/LONG ISLAND BUS, Notice of Cross Settlement and Reply,

IT IS HEREBY ADJUDGED, that judgment be entered in favor of Defendant MTA/LONG ISLAND BUS and that Plaintiff's Complaint against Defendant MTA/LONG ISLAND BUS is

dismissed with prejudice, and it is further

ADJUDGED that defendant MTA/LONG ISLAND BUS, having its principal place of business at 128-15 28th Avenue, College Point, New York 11354, shall have judgment against plaintiff SORORAZAM BETHUNE, residing at 101 Washington Boulevard, Apt. 1325, Stamford, Connecticut 06902, for taxed costs and disbursements in the amount of \$ ~~1,200.00~~ for a total of \$ ~~1,200.00~~ and Defendant shall have execution therefore.


Hon. Thomas Eganman, SSC
4-19-16

(S)

ENTERED

APR 22 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE

LIB 9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE,

Index No.: 10773/12

Plaintiff,

-against-

MTA/LONG ISLAND BUS and "JOHN DOE" first and
last name being fictitious said party intended to be the bus
operator of the bus,

Defendants.

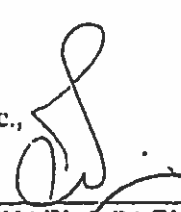
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NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that the annexed true copy of a Proposed Judgment in the above-
entitled action will be presented for signature to the Clerk of the Supreme Court, Nassau County
Clerk's Office located at 240 Old Country Road, Mineola, New York on the 8th day of April, 2016.

Dated: Mineola, New York
March 24, 2016

Yours, etc.,



BY: MICHAEL J. PAGLINO
ARMIENTI, DEBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA/LONG ISLAND BUS
170 Old Country Road, Suite 607
Mineola, New York 11501
(516) 877-1202

TO: STEWART A. JACKSON, ESQ.
The S.A. Jackson Law Firm, P.C.
Attorney for Plaintiff
1402 Mitchel Field Way
Garden City, New York 11530
(516) 457-3671

NASSAU
COUNTY
CLERK

NASSAU
COUNTY
CLERK

NASSAU
COUNTY
CLERK

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

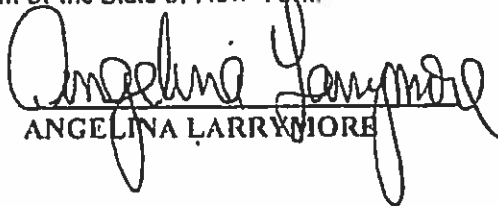
ANGELINA LARRYMORE, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Brooklyn, New York.

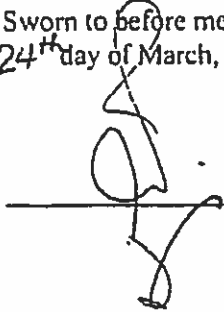
That on the 24th day of March, 2016, deponent served by mail the within: **NOTICE OF SETTLEMENT, PROPOSED JUDGMENT, BILL OF COSTS UPON:**

STEWART A. JACKSON, ESQ.
The S.A. Jackson Law Firm, P.C.
Attorney for Plaintiff
1402 Mitchel Field Way
Garden City, New York 11530
(516) 457-3671

which addresses is designated by said attorney(s) for purpose, by depositing a true copy thereof, enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department of the State of New York.


ANGELINA LARRYMORE

Sworn to before me this
24th day of March, 2016




MICHAEL PAGLINO
Notary Public, State Of New York
No. 02PA4925768
Qualified In Suffolk County
Commission Expires March 7, 20 18

LIB 9290
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

INDEX NO.: 10773/12

SORORAZAM BETHUNE,

Plaintiff,

-against-

MTA/LONG ISLAND BUS and "JOHN DOE" first and last name being fictitious said party
intended to be the bus operator of the bus,

Defendants.

NOTICE OF SETTLEMENT, PROPOSED JUDGMENT, BILL OF COSTS

ARMIENTI, DeBELLI,IS, GUGLIELMO & RHODEN, LLP

Attorneys for Defendant

MTA/LONG ISLAND BUS

Office & P.O. Address

170 Old Country Road-Suite 607

Mineola, New York 11501

(516) 877-1202

NASSAU INDEX #

FILED

APR 22 2016

COUNTY CLERK OF
NASSAU COUNTY

12/10773

4/22

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

ANGELINA LARRYMORE, being duly sworn, deposes and says:

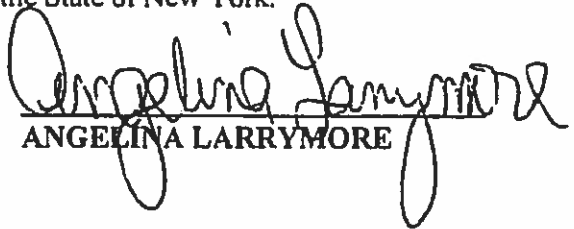
That deponent is not a party to this action, is over the age of 18 years and resides in Brooklyn, New York.

That on the 13th day of May, 2016, deponent served by mail the within: **JUDGMENT WITH NOTICE OF ENTRY UPON:**

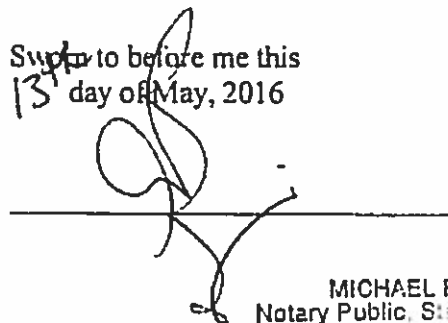
The S.A. Jackson Law Firm, P.C.
Attorneys for Plaintiff
1402 Mitchel Field Way
Garden City, New York 17530

Sororazam Bethune
101 Washington Boulevard-Apt. 1325
Stamford, Connecticut 06902

which addresses are designated by said attorneys for purpose, by depositing a true copy thereof, enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department of the State of New York.


ANGELINA LARRYMORE

Sworn to before me this
13th day of May, 2016



MICHAEL PAGLINO
Notary Public, State Of New York
No. 02PA4925768
Qualified In Suffolk County
Commission Expires March 7, 20 18

LIB 9290

INDEX NO.: 10773/2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

SORORAZAM BETHUNE,

Plaintiff,

-against-

MTA LONG ISLAND BUS, and "JOHN DOE" first and last name being fictitious said
party intended to be the operator of the bus,

Defendants.

JUDGMENT WITH NOTICE OF ENTRY

ARMIENTI, DeBELLIS, GUGLIELMO & RHODEN, LLP
Attorneys for Defendant
MTA LONG ISLAND BUS
Office & P.O. Address
170 Old Country Road-Suite 607
Mineola, New York 11501
(516) 877-1202

RESP. APP 9

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M214080
E/ct

L. PRISCILLA HALL, J.P.
LEONARD B. AUSTIN
ROBERT J. MILLER
JOSEPH J. MALTESE, JJ.

2015-08707, 2016-03167

DECISION & ORDER ON MOTION

Sororazam Bethune, respondent,
v MTA/Long Island Bus, appellant,
et al., defendant.

(Index No. 10773/12)

Motion by the respondent pro se for poor person relief and the assignment of counsel on appeals from two orders of the Supreme Court, Nassau County, entered July 8, 2015, and March 2, 2016, respectively. Cross motion by the appellant to direct the respondent to post security for costs on the appeals pursuant to CPLR 8501.

Upon the papers filed in support of the motion and the cross motion, and the papers filed in opposition thereto, it is

ORDERED that on the Court's own motion, the appeal from the order entered July 8, 2015, is dismissed, without costs or disbursements, for failure to timely perfect in accordance with the rules of this Court (*see* 22 NYCRR 670.8[e]); and it is further,

ORDERED that on the Court's own motion, the appeal from the order entered March 2, 2016, is dismissed, without costs or disbursements, on the ground that the right of direct appeal therefrom terminated upon entry of the final judgment in the above-entitled action on April 22, 2016 (*see Matter of Aho*, 39 NY2d 241); and it is further,

ORDERED that the motion and the cross motion are denied as academic.

HALL, J.P., AUSTIN, MILLER and MALTESE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

June 30, 2016

BETHUNE v MTA/LONG ISLAND BUS

RESP. APP 10

Nassau County
Maureen O'Connell
County Clerk
Mineola, NY 11501



63 2016 00163082

ef ID#: IN 12--010773

Instrument Number: 2016- 00163082

As

G05 - NOTICE OF APPEAL

Recorded On: July 14, 2016
Articles: SORORAZAM BETHUNE
TO MTA/LONG ISLAND BUS
Recorded By: BETHUNE

Num Of Pages:
Comment:

**** Examined and Charged as Follows: ****

G05 - NOTICE OF APPEAL 65.00
Recording Charge: 65.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Nassau County, NY

File Information:

Record and Return To:

Document Number: 2016- 00163082
Receipt Number: 326901
Recorded Date/Time: July 14, 2016 03:27:25P
Book-Vol/Pg:
Cashier / Station: 0 AF / NCCL-JCSQBP2



Maureen O'Connell

County Clerk Maureen O'Connell

original

COURT OF APPEALS - STATE OF NEW YORK

Sororazam Bethune

Appellant-Plaintiff,

- against -

MTA Long Island Bus,
Respondent-Defendant.

Nassau County Index:

Appellate Division 2nd Judicial Dpt

Docket No.: 2015-08707

Docket No.: 2016-03167

Sup. Ct. NC Index: ~~2016-03167~~/2012-10773

NOTICE OF APPEAL

State of Connecticut) ss:
County of Fairfield)

Please Take Notice that, Sororazam Bethune hereby appeals to the Court of Appeals of the State of New York from (a) the Order/Decision of the Appellate Division dated June 30, 2016: appealing from Par. 4: dismissing Appellant's Appeal from 03/01/2016 Sup. Ct. NC Justice Feinman's Order since the Appellant's Attorney then appealed from March 1, 2016 Order of Justice Feinman, Sup. Ct. NC; and Appellant's Attorney then did not appeal from Sup. Ct. Justice Feinman's Judgment dated April 22, 2016. Also (b) appealing from Justice Feinman, Sup. Ct. Order dated March 1, 2016 from each and every part thereof; and Sup. Ct. Justice Feinman's April 22, 2016 Judgment, from each and every part thereof.

DATED: July 14, 2016

Mineola, New York



Sororazam Bethune, Appellant

101 Washington Blvd., Apt. 1325
Stamford, CT 06902 - (516) 965-1146

To: Armienti, DeBellis, Guglielmo, et al.
JAMES DUNNING, ESQ.
39 Broadway, Suite No. 520
New York, New York 10006
[By Priority Mail]

Sworn to before me STACY SKEETE
this 13th day of JULY, 2016


NOTARY PUBLIC

NEW YORK STATE
COURT OF APPEALS

Preliminary Appeal Statement

Pursuant to section 500.9 of the Rules of the Court of Appeals

1. CAPTION OF CASE (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

Sororazam Bethune,
Appellant-Plaintiff,

-against-

MTA Long Island Bus,
Respondent-Defendants.

2. Name of court or tribunal where case originated, including county, if applicable:
Supreme Court of Nassau County

3. Civil index number, criminal indictment number or other number assigned to the matter in the court or tribunal of original instance: 10773-2012

4. Docket number assigned to the matter at the Appellate Division or other intermediate appellate court: 2015-08707 / 2016-00003167 (2016-03167)

5. Jurisdictional basis for this appeal:

☐ Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals
☐ Leave to appeal granted by the Appellate Division or a Justice of the Appellate Division

☐ CPLR 5601(a): dissents on the law at the Appellate Division

☐ CPLR 5601(b)(1): constitutional ground (Appellate Division order)

☐ CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)

☐ CPLR 5601(c): Appellate Division order granting a new trial or hearing, upon stipulation for judgment absolute

☒ CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order

☒ Other (specify) My Attorney, Stuart A. Jackson, forgot to appeal from the Judgment.

6. How this appeal was taken to the Court of Appeals (choose one) (see CPLR 5515[1]):

NOTICE OF APPEAL

Date filed: March 10, 2016

Clerk's office where filed: Nassau County Clerk, Mineola

ORDER GRANTING LEAVE TO APPEAL (civil case):

Court that issued order: _____

Date of order: _____

CERTIFICATE OR ORDER GRANTING LEAVE TO APPEAL (criminal case):

Justice or Judge who issued order: _____

Court: _____

Date of order: _____

7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):

Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry? ☒ yes ☐ no

If yes, date on which appellant was served (if known, or discernable from the papers served): June 30, 2016

If yes, method by which appellant was served: ☐ personal delivery
☒ regular mail
☐ overnight courier
☐ other (describe _____)

Did the Appellate Division grant or deny a motion for leave to appeal to this Court in this case? ☐ yes ☐ no

If yes, fill in the following information:

- a. date appellant served the motion for leave to appeal made at the Appellate Division: _____
- b. date on which appellant was served with the Appellate Division order granting or denying such motion with notice of the order's entry: _____, and
- c. method by which appellant was served with the Appellate Division order granting or denying such motion:

_____ personal service
_____ regular mail
_____ overnight courier
_____ other (describe _____)

8. Party Information:

Instructions: Fill in the name of each party to the action or proceeding, one name per line. Indicate the status of the party in the court of original instance and the party's status in this Court, if any. Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, third-party plaintiff, third-party defendant, intervenor. Examples of a party's Court of Appeals status include: appellant, respondent, appellant-respondent, respondent-appellant, intervenor-appellant.

No.	Party Name	Original Status	Court of Appeals Status
1	Sororazam Bethune	Plaintiff	Appellant
2	MTA Long Island Bus	Defendant	Respondent
3			
4			
5			
6			
7			
8			
9			
10			

9. Attorney information:

Instructions: For each party listed above, fill in the name of the one law firm and responsible attorney who will act as counsel of record, if the party is represented. Where a litigant is self-represented, fill in that party's data in section 10 below.

For Party No. 1 above:

Law Firm Name: Pro Se

Responsible Attorney: _____

Street Address: _____

City: _____

State: _____

Zip: _____

Telephone No: _____

Ext. _____

Fax: _____

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals? yes no

For Party No. 2 above:

Law Firm Name: Armienti Guallermo, et al.

Responsible Attorney: James J. Dunning, Esq.

Street Address: 39 Broadway, Suite No. 520

City: New York

State: NY

Zip: 10006

Telephone No: (212) 877-1202

Ext. _____

Fax: _____

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals? yes no

For Party No. above:

Law Firm Name: _____

Responsible Attorney: _____

Street Address: _____

City: _____

State: _____

Zip: _____

Telephone No: _____

Ext. _____

Fax: _____

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of Appeals? yes no

For Party No. __ above:

Law Firm Name: _____

Responsible Attorney: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone No: _____ Ext. _____ Fax: _____

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of

Appeals? ☐ yes ☐ no

For Party No. __ above:

Law Firm Name: _____

Responsible Attorney: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone No: _____ Ext. _____ Fax: _____

If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of the Court of

Appeals? ☐ yes ☐ no

(Use additional sheets if necessary)

10. Self-Represented Litigant information:

For Party No. 1 above:

Party's Name: Sororazam Bethune

Street Address: 101 Washington Blvd., Apt. 1325

City: Stamford State: CT Zip: 06902

Telephone No.: (516) 965-1146 Ext. _____ Fax: _____

For Party No. __ above:

Party's Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone No.: _____ Ext. _____ Fax: _____

11. Related motions and applications:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? ☐ yes ☒ no

If yes, specify:

a. the party who filed the motion or application: _____

b. the return date of the motion: _____

c. the relief sought: _____

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken? ☐ yes ☐ no

If yes, specify:

- a. the party who filed the motion or application: _____
- b. the return date of the motion: _____
- c. the relief sought: _____

Are there any other pending motions or ongoing proceedings in this case? If yes, please describe briefly the nature and the status of such motions or proceedings: _____

12. Set forth, in point-heading form, issues proposed to be raised on appeal (this is a nonbinding designation, for preliminary issue identification purposes only):

During April, 2016, my Attorney Stuart A. Jackson called me said that MTA had filed a Judgment of \$1200. He said he already told MTA it was not justified for me to pay for my injuries. He said he would file 2nd Appeal from Judgment. I assume he forgot. On May 4, 2016, since my MTA cases were dismissed. Also, my daughter's injuries against "NUMC" was dismissed. I released my attorney. During Nov. 5, 2015 Trial, Sup.Ct. MTA Attorney was pounding on my head accusing me not letting me explain, I was having chest pains and could not testify effectively my attorney was sleeping. On Nov. 6, 2015 before summation he asked the Judge to read the missing witness charge to Jurors, it was denied.

(use additional sheet, if necessary)

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

☒ yes ☐ no

If yes, set forth a concise statement why appellant believes that consideration pursuant to section 500.11 is appropriate (see section 500.11[b]): _____ (Fill in on lines below)

*My Attorney forgot to file from Judgment. He
appealed like Justice therefore, denied my Appeal.
My Attorney was not competent, could not
remember facts. He filed Appeal from 3/14/2016*

14. Notice to the Attorney General.

*Judge Feinman's order and
did not follow C.R. I have the right
to Appeal.*

Is any party to the appeal asserting that a statute is unconstitutional? ☐ yes ☒ no

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? ☐ yes ☐ no

*So my
in tower.*

15. **ITEMS REQUIRED TO BE ATTACHED TO EACH COPY OF THIS STATEMENT:**

A. A copy of the filed notice of appeal to the Court of Appeals (with proof of service), a copy of the order granting leave to appeal to the Court of Appeals (civil case), or a copy of the certificate granting leave to appeal to the Court of Appeals (criminal case), whichever is applicable;

B. A copy of the signed order, judgment or determination appealed from to this Court (use document issued by the court, not internet version);

C. A signed copy of any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review (use document issued by the court, not internet version);

D. Copies of all decisions or opinions relating to the orders set forth in subsections B and C above (use documents issued by the court, not internet versions); and

E. If required, a copy of the notice sent to the Attorney General pursuant to section 500.9(b) of the Rules of the Court of Appeals.

F. If required, a disclosure statement pursuant to section 500.1(f) of the Rules of the Court of Appeals.

Date: _____

Submitted by: _____
(Name of law firm)

(Signature of responsible attorney)

(Typed name of responsible attorney)

Attorneys for appellant _____
(Name of party)

-or-

Date: 07/14/2016

Submitted by S. Bethune, pro se
(Signature of appellant)

Sororazam Bethune, Appellant, Prose

(Typed/printed name of self-represented appellant)

Effective 12/09/10

COUNTY OF STATE OF New York
DISTRICT: Count of Appeals

Return Date:

Part:

Index No.: 2012-10773

ATTORNEY(S) : PH:
ADDRESS: File No.:

SOROAZAM Bethune

VS

Plaintiff / Petitioner

MTA LONG ISLAND BUS

Defendant / Respondent

STATE OF NEW YORK,
COUNTY OF NASSAU, SS.:

AFFIDAVIT OF SERVICE
CPLR 2103 (B)

The undersigned deponent, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of eighteen years and resides in the State of New York.

That on July 14 2016 deponent served the within

Notice of Appeal

on JAMES DUNNING ESQ

attorney(s) for Respondent

at their office: 39 Broadway Suite 520, NYC, NY 10006

☐ By delivering the paper to him personally; or

☐ The office being open, by leaving the paper with a person in charge, to wit: _____

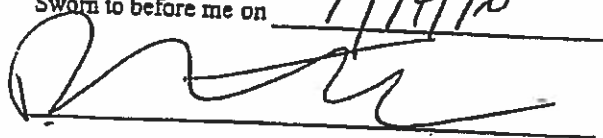
☐ No person in charge, by leaving it in a conspicuous place;

☐ The office being closed, by depositing the paper enclosed in a sealed wrapper directed to him/her in his/her/their office letter drop or box.

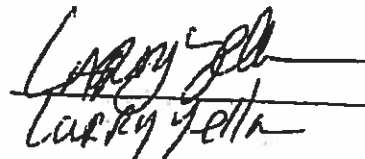
☐ By First Class Mail, Certified Mail Return receipt Requested.

☒ By overnight delivery

Sworn to before me on 7/14/16



PATRICIA ROTHFRITZ
Notary Public, State of New York
No. 01RO6055503
Qualified in Nassau County
Commission Expires February 28, 2019



Invoice/Work Order # _____

RESP. APP 11

ARMIENTI, DeBELLIS, GUGLIELMO & RHODEN, LLP

ATTORNEYS AT LAW
39 BROADWAY, SUITE 520
NEW YORK, NEW YORK 10006-3034
(212) 809-7074
FAX NO. (212) 809-7713

 **FILE COPY**

MICHAEL ARMIENTI*
SILVANA DeBELLIS
JOHN M. GUGLIELMO
HORACE O. RHODEN
VANESSA M. CORCHIA
MICHAEL J. PAGLINO
HARRIET WONG

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TEANECK, NJ 07666-3432
(201) 222-8588

MATTHEW A. WINDMAN*
RYAN H. McALLISTER
THOMAS J. REAPE, JR.
ERIN M. McGINNIS
MICHELLE S. REGAN
ANASTASIOS N. FLOKAS
MICHAEL J. HEWLEY*
MOHAMMAD M. HAQUE
MICHAEL A. SIMON
SHANTAE A. JOHNSON
JOSEPH D. ADDABBO

JAMES J. DUNNING
SUSAN D. SMODISH*
MICHAEL L. MORIELLO

EMAIL: INFO@ADGR.LAW.COM

PLEASE RESPOND TO NEW YORK OFFICE

*NY & FL BARS
*NY & MA BARS
*NY & NJ BARS

August 3, 2016

VIA FEDEX OVERNIGHT MAIL

Clerk of the Court
New York Court of Appeals
20 Eagle Street
Albany, NY 12207-1009

Att: John P. Asiello, Esq.
Chief Clerk and Legal Counsel to the Court

Re: Sororazm Bethune v. MTA Long Island Bus
Court of Appeals Motion No.: 2016-777
Nassau County Index No.: 10773/2012
App. Div., 2nd Dept. Docket Nos.: 2015-
08707 and 2016-03167
Our File No.: LIB9290

Dear Mr. Asiello:

The office of the undersigned is counsel for defendant/respondent MTA Long Island Bus in the above-referenced matter.

On July 27, 2016 our office received correspondence from this Honorable Court dated July 25, 2016 requesting comment on three issues concerning this

court's *sua sponte* consideration of subject matter jurisdiction. Defendant-respondent respectfully comments as follows:

Disclosure Statement pursuant to §500.1(f) of the Rules of this court

Defendant/respondent Metropolitan Suburban Bus Authority d/b/a and s/h/a MTA/Long Island Bus was formerly a wholly owned subsidiary of the Metropolitan Transportation Authority. MTA Long Island Bus ceased operations as of December 31, 2011.

Background of facts to place jurisdictional issues in context

This is a civil tort action commenced by plaintiff by the filing of a Summons and Complaint in the Supreme Court, Nassau County in which the plaintiff claims to have sustained personal injuries on August 24, 2011 by reason of the purported negligence of the defendant in the operation of a bus on which plaintiff was a passenger. The nature of the claim against defendant is common law negligence.

The liability portion of a bifurcated trial was conducted on November 5th and 6th, 2015 in the Supreme Court, County of Nassau presided over by the Hon. Thomas Feinman. By unanimous verdict on November 6, 2015, defendant-respondent was determined to be not negligent. Therefore no damages trial needed to be conducted. Judgment on the defense verdict was not immediately entered as, in the interim, the plaintiff (through her then counsel) moved by Order to Show Cause pursuant to CPLR Rule 4404 to set aside the defense verdict and to direct a new trial. Plaintiff's motion was untimely as CPLR Rule 4405 requires such motions to be made no later than 15 days after the verdict. The motion was disposed of by Order of Hon. Thomas Feinman dated March 1, 2016 and entered on March 2, 2016 (hereinafter sometimes "Feinman Order") which states *in toto*:

The plaintiff's untimely motion for an order vacating the jury determination in favor of the defendant on the grounds that such determination was inconsistent with the

evidence offered at trial, and returning this matter for reassignment for a new bench trial of this matter is denied.

Thereafter, plaintiff's counsel simultaneously served the Feinman Order with Notice of Entry on March 10, 2016 together with a Notice of Appeal of the Feinman Order also dated March 10, 2016, which was filed with the Nassau County Clerk.

Judgment on the defense verdict was later entered on April 22, 2016 and duly served with Notice of Entry.

Plaintiff (by this time *pro se*) moved in the Appellate Division, Second Department by Notice of Motion dated May 9, 2016 for omnibus relief: (1) for leave to proceed as a poor person; and, (2) for the appointment of counsel to prosecute plaintiff's appeal of the Feinman Order in the Appellate Division, Second Department. Defendant-respondent cross-moved on May 17, 2016, for an order directing plaintiff to post a bond as "security for costs" pursuant to CPLR § 8501 by reason that she is an out of state resident. A statutorily mandated Bill of Costs incorporated in the April 22, 2016 Judgment had been awarded to defendant-respondent by virtue of the fact defendant had prevailed at trial.

By Order of the Appellate Division, Second Department dated June 30, 2016 that court, *inter alia*, *sua sponte* dismissed plaintiff's appeal of the March 2, 2016 Feinman Order "on the ground that the right of direct appeal therefrom terminated upon entry of the final judgment in the above entitled action on April 22, 2016."

Sometime thereafter, plaintiff *pro se* apparently realized that the time to appeal the April 22, 2016 Judgment had expired with no Notice of Appeal therefrom having been filed. Accordingly, we thereafter received a Notice of Appeal dated July 14, 2016 from plaintiff *pro se* which set forth a Court of Appeals caption and indicated that plaintiff was appealing directly to this court from the Appellate

Division, Second Department's June 30, 2016 Order, from Judge Feinman's March 2, 2016 Order, and from the Judgment entered April 22, 2016.¹

On plaintiff's "Preliminary Appeal Statement" to this court plaintiff marked the boxes set forth under question (5) as to the jurisdictional bases of her purported July 14, 2016 appeal as follows:

- ☒ CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order
- ☒ Other (specify) My Attorney, Stuart A. Jackson, forgot to appeal from the Judgment

As to item 6 in her "Preliminary Appeal Statement" plaintiff-appellant filled in:

NOTICE OF APPEAL Date filed: March 10, 2016²
Clerk's office where filed: Nassau County
Clerk. Mineola

As set forth more fully below, most respectfully this court lacks the subject matter jurisdiction to entertain plaintiff's proposed appeal. Each of the issues this court delineated in its July 25, 2016 correspondence are set forth *seriatim* with the position of defendant-respondent herein.

¹ No copies of the documents plaintiff is attempting to appeal were attached to her July 14, 2016 Notice of Appeal that had been served on defendant-respondent, but rather, only a 6 page "Preliminary Appeal Statement".

² This refers to plaintiff's Notice of Appeal dated March 10, 2016 of the Feinman Order filed by plaintiff in the Supreme Court, Nassau County.

Issue (1): Whether the June 30, 2016 Order of the Appellate Division, Second Department and the March 2, 2016 Order of Hon. Thomas Feinman entered March 2, 2016 “finally determine the action within the meaning of the Constitution”

Summarily stated, this court has clearly, unequivocally, and oft-repeated that an order disposing of a motion to set aside a verdict is not “final” within the meaning of the Constitution. Accordingly, to the extent plaintiff seeks to appeal from either the June 30, 2016 Order of the Appellate Division, Second Department dismissing plaintiff’s appeal of the March 2, 2016 Order of Judge Feinman which denied her untimely motion to set aside the defense verdict, or from Judge Feinman’s order itself, this court is without authority to entertain such appeal by reason of the lack of finality of those orders.

By reference to CPLR §5611 “if the appellate division disposes of all the issues in the action its order shall be considered a final one....” However, cases are legion in holding that an appeal of an order disposing of a motion to set aside a verdict is not final and is not reviewable by this court.

In this regard, it was made quite clear by this court in Butler v. New York City Transit Authority, 14 N.Y.3d 909, 904 N.Y.S.2d 688, 930 N.E.2d 761 (2014) that the disposition of a motion to set aside a verdict, is not by its nature “final” and that no appeal lies in this court *from the disposition of the appellate division of such order*. In this regard this honorable court stated:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order denying the CPLR 4404 motion to set aside the verdict resolves the issues raised on the CPLR 4404 motion; it does not dispose of all of the issues in the action (see CPLR 5611). The final and appealable paper to the Court of Appeals is the final judgment entered after the denial of the motion or an

Appellate Division order resolving an appeal from that judgment

More recently, this court in Echostar Satellite LLC v. ESPN, Inc. 21 N.Y.3d 1032, 972 N.Y.S.2d 216, 995 N.E.2d 179 (2013) stated in unequivocal terms:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order affirming the denial of the motion for judgment notwithstanding the verdict and affirming the denial of the motion to set aside the verdict resolves the issues raised on those motions; it does not dispose of all of the issues in the action (see CPLR 5611). The final and appealable paper to the Court of Appeals is the final judgment entered after the denial of the motions, or an Appellate Division order resolving an appeal from that judgment

By way of another example, this court in Anderson v. Young & Rubicam, 14 N.Y.3d 909, 904 N.Y.S.2d 688, 930 N.E.2d 761 (2010) recognized that the appellate division disposition of an order to set aside a verdict is not “final” as that term is used in CPLR §5611 noting:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order affirming the denial of the CPLR 4404 motion to set aside the verdict does not finally determine the action

Likewise in Cuadraro v. New York City Transit Authority, 14 N.Y.3d 748, 898 N.Y.S.2d 8, 925 N.E.2d 83 (2010), this court determined:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. An order denying a CPLR 4404 motion to set aside a verdict is nonfinal. The final and appealable paper to the Court of Appeals is the judgment entered after the denial of the motion.

In Schwatz v. Nagori, 115 A.D.3d 733, 981 N.Y.S.2d 600 (2nd Dept. 2014), the Appellate Division, Second Department affirmed the trial court's denial of plaintiff's motion pursuant to CPLR 4404 to set aside the defense verdict. On motion to this court for leave to appeal, in Schwatz v. Nagori, this court denied the motion at 24 N.Y.3d 994, 997 N.Y.S.2d 105, 21 N.E.3d 556 acknowledging "that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution".

Accordingly it is incontrovertible that this court is without jurisdiction to hear an appeal of a non-final order, such as the Order of Hon. Thomas Feinman entered March 2, 2016 denying plaintiff's untimely motion to set aside the defense verdict and the Appellate Division's June 30, 2016 disposition of same.

Issue (2): "Whether insofar as taken from the June 30, 2016 Appellate Division Order, any jurisdictional basis exists to support the appeal taken as of right (see CPLR 5601)"

Civil Practice Law and Rules, section 5601 sets forth the intractable criteria which can support an appeal *as of right*, but none of which apply to the matter *sub judice*.

Going down each sub-part in order, the first is CPLR §5601(a) entitled "Dissent", which, among other things, requires "a dissent by at least two justices [of the appellate division] on a question of law in favor of the party taking such appeal". Inarguably, the June 30, 2016 of the Appellate Division, Second Department

dismissing plaintiff's appeal of the March 2, 2016 Feinman Order denying her motion to set aside the verdict was unanimous. Notably, plaintiff did not even contend in her "Preliminary Appeal Statement" that her attempted appeal was being made pursuant to this subpart.

Next, is CPLR §5601(b) entitled "Constitutional grounds" which contains four subparts. As to CPLR §5601(b)(1) an appeal as of right to the Court of Appeals lies "from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States" [emphasis added]. We have discussed the finality element above, which the Appellate Division order does not meet. But, more significantly, by no stretch of the imagination in this garden variety tort action in which plaintiff claimed *common law* negligence by the defendant in driving a bus, did the disposition involve construction of either the state or the federal constitution, nor was such discussed by the appellate division order at issue. Notably, plaintiff did not even contend in her "Preliminary Appeal Statement" that her attempted appeal was being made pursuant to this subpart.

As to CPLR §5601(b)(2) (also under the heading "Constitutional grounds"), alternatively an appeal as of right to the Court of Appeals will lie "from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." This subpart is plainly inapplicable to the Order of the Appellate Division, Second Department dated June 30, 2016 as that court was not the "court of record of original instance" and, as discussed above, the order does not "finally determine" the action, nor does such order involve the validity of a statute under the constitution.

As to CPLR §5601(c), while the main subdivision is "Constitutional grounds", the title of this particular sub-part reflects that an appeal to this court lies "From an order granting new trial or hearing, upon stipulation absolute". The text then elaborates. Manifestly the order of the appellate division did not grant or affirm the grant of a new trial and, as it is patently inapplicable to the June 30, 2016 Order

of the Appellate Division, Second Department, such affords no basis for this court's jurisdiction of plaintiff's attempted appeal.

As to CPLR §5601(d) (also under the heading "Constitutional grounds"), such indicates that an appeal as of right may be taken to this court "from a final judgment entered in a court of original instance, from a final determination of an administrative agency or from a final arbitration award, or from an order of the appellate division which finally determines an appeal from such a judgment or determination, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality" [emphasis added].

This court has invited comment as to the effect of CPLR §5601 on the appealability of the Appellate Division, Second Department June 30, 2016 Order, so for emphasis we underscored that portion of subpart (d) which pertains to an appellate division order. Focusing on that, it is clear that subpart (d) affords no basis for this court's subject matter jurisdiction. First of all, it will be apparent, that the subject order of the appellate division disposed of the Feinman Order entered March 2, 2016 declining to set aside the verdict; it did not dispose of an appeal of the judgment because no appeal of the judgment was ever even made to the appellate division. Moreover, subpart (d) contains a qualifier; it limits the jurisdiction of this court *as of right* to an appeal "from an order of the appellate division which finally determines an appeal from such a judgment or determination" but, *only* to such circumstances "where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality" [emphasis added]." Inarguably, the appellate division did not render an order on a prior appeal - - indeed, there was no prior appeal!

Thus, although in plaintiff's "Preliminary Appeal Statement" this subpart, CPLR §5601(d) is check-marked as the basis for the jurisdiction of this court (item(5)), such is misplaced. This subpart is patently inapplicable.³

Issue (2): Whether a direct appeal lies to this Court from the April 22, 2016 Judgment and the March 2, 2016 Supreme Court order pursuant to CPLR §5601(b)(2)

As noted in the discussion of Issue (2) above, CPLR §5601(b)(2) (under the heading "Constitutional grounds"), permits an appeal *as of right* to this court "from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States."

First, insofar as the April 22, 2016 judgment is concerned, while the judgment entered after a jury verdict in favor of defendant finding the defendant was not negligent and so dismissing the action does, in fact, finally determine the action, yet the finality of the judgment in the originating court is not the only requirement authorizing direct appeal under CPLR §5601(b)(2); rather there is a qualifier that such is appealable as of right *only* "where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." Here the underlying action was a common law negligence claim that did not give rise to any issue regarding the validity of a statute or the constitution. Thus the very terms of CPLR §5601(b)(2) foreclose any right to direct appeal of the Judgment entered on April 22, 2016.

³ Plaintiff also check marked "Other" in response to item (5) on her "Preliminary Appeal Statement" as the basis for this court's supposed subject matter jurisdiction, but the fact that no timely appeal was taken of the April 22, 2016 judgment by reason that, in plaintiff's words in item (5), "My attorney, Stuart A. Jackson forgot to appeal from the Judgment", this, of course, does not confer subject matter jurisdiction on this court.

Moreover, as this court will perceive, regardless of any right of direct appeal (which there is not), neither plaintiff nor her counsel timely appealed the Judgment entered on April 22, 2016 and absent a timely appeal, consideration by this court is foreclosed in any event.

This court also invited comment as to whether a right of direct appeal lies from the Order of Judge Feinman entered on March 2, 2016 which denied plaintiff's untimely motion to set aside the defense verdict. The first requirement of CPLR §5601(b)(2) authorizing a direct appeal, is that it be "from a judgment of a court of record of original instance..." [emphasis added]. The order of Judge Feinman entered March 2, 2016 by the Nassau County Clerk is clearly not a judgment. The next requirement of CPLR §5601(b)(2) authorizing a direct appeal is that the judgment be one "which finally determines the action." The absence of finality is discussed in Issue (1) above. The third requirement of CPLR §5601(b)(2) authorizing a direct appeal is that the final judgment be one "where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." As indicated above, Judge Feinman's Order had nothing whatsoever to do with the validity of a statute under the constitution. On all counts, no direct appeal lies to this court with regard to Judge Feinman's March 2, 2016 Order. In fact, on or about March 10, 2016 plaintiff had filed her Notice of Appeal dated March 10, 2015 of the Feinman Order which, by its terms, was an appeal taken to the Appellate Division, Second Department.

For the reasons set forth herein, this court is without subject matter jurisdiction over plaintiff's attempted appeal, and therefore plaintiff's Notice of Appeal to this court dated July 14, 2016 must be dismissed.

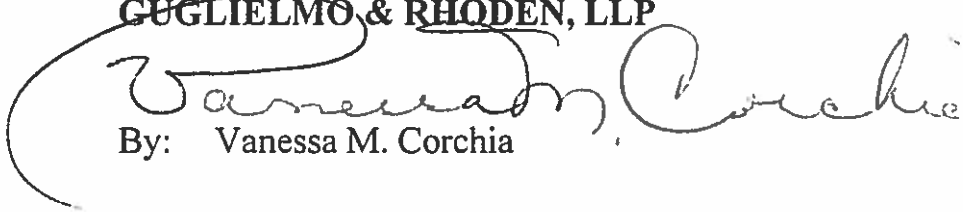
New York Court of Appeals
Sororazam Bethune v. MTA Long Island Bus
August 3, 2016
Page 12

Thanking this court for its time and attention, I remain,

Respectfully,

ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP

By: Vanessa M. Corchia

A large, stylized handwritten signature in dark ink, which appears to read 'Vanessa M. Corchia', is written over the typed name and extends to the right.

VMC:loh

cc: Via Regular Mail
Sororazam Bethune
Plaintiff *pro se*
101 Washington Blvd. Apt 1325
Stamford, CT 06902

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ERIK LIDES, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in the County of Queens.

That on August 3, 2016, your deponent served by regular mail a copy of the within **CORRESPONDENCE TO THE COURT OF APPEALS DATED AUGUST 3, 2016** upon:

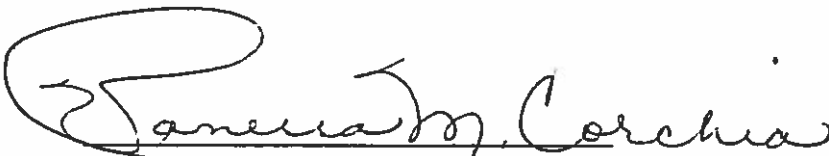
Sororazam Bethune
Pro-Se Appellant
101 Washington Blvd. Apt 1325
Stamford, CT 06902

which addresses is/are designated by said ProSe appellant for such purpose, by depositing a true copy thereof, enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



ERIK LIDES

Sworn to before me this
3rd day of August, 2016



Notary Public

Vanessa Mary Corchia
Notary Public, State of New York
No.: 02CO6285062
Qualified in Queens County
Commission expires 7/01/2017

No. 17-8000

IN THE
Supreme Court of the United States

SORAZAM BETHUNE,
Petitioner,

v.

MTA LONG ISLAND BUS,
Respondent.

On Petition for Writ of Certiorari to the
New York State Court of Appeals

APPENDIX
RESP. APP 12-25

MICHAEL J. PAGLINO, ESQ.
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RESPONDENT'S APPENDIX

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Order of the Appellate Division, Second Department dated June 30, 2016 to the New York State Court of Appeals.....	12
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RESP. APP 12

STATE OF NEW YORK
COURT OF APPEALS

-----X
SOROAZAM BETHUNE,

Plaintiff-Appellant,

**Nassau County
Index No.:
10773/2012**

-against-

MTA/LONG ISLAND BUS,

Defendant-Respondent,

**App. Div. 2nd Dept.
Docket Nos:
2015-08707
2016-03167**

-and-

“JOHN DOE” first and last name being fictitious said
party intended to be the operator of the bus,

**AFFIRMATION IN
OPPOSITION**

Defendant.
-----X

(Return date:
July 25, 2016)

Vanessa M. Corchia, an attorney duly admitted to practice law before the
courts of the State of New York, hereby affirms the following under the penalty of
perjury:

1. Your affirmant is a partner of the firm Armienti, DeBellis, Guglielmo
& Rhoden, LLP, attorney for defendant-respondent MTA/Long Island Bus in the
above-referenced matter.

2. I make this affirmation on behalf of defendant-respondent MTA/Long
Island Bus in opposition to the omnibus motion of the plaintiff-appellant by Notice

of Motion “sworn to” July 13, 2016 ostensibly seeking leave to appeal to this court from the Order of the Appellate Division, Second Department, dated/entered June 30, 2016 by which order the appellate division *sua sponte* dismissed plaintiff’s appeal from the Order of Hon. Thomas Feinman (Justice of the Supreme Court Nassau County) dated March 1, 2016 and entered March 2, 2016 which denied plaintiff’s motion to set aside the defense verdict in this matter. Notably, plaintiff did not timely file a Notice of Appeal in relation to the judgment entered consequent to the defense verdict. This affirmation is also submitted in opposition to plaintiff’s motion to the extent plaintiff may be seeking permission from this court to appeal the Judgment of the Nassau County Clerk entered on April 22, 2016 notwithstanding plaintiff did not timely file a Notice of Appeal of that Judgment with the Nassau County clerk and the time to do so has, as acknowledged by the plaintiff, already expired.

3. I am fully familiar with the facts and circumstances set forth herein based on my review of the litigation file maintained by our office.

DISCLOSURE STATEMENT

4. Metropolitan Suburban Bus Authority d/b/a and s/h/a MTA/Long Island Bus was formerly a wholly owned subsidiary of the Metropolitan Transportation Authority. MTA Long Island Bus ceased operations as of December 31, 2011.

Summary of Bases for Denial of Review By This Court

5. This is a civil tort action by which plaintiff seeks to recover for personal injuries allegedly sustained on August 24, 2011 by reason of the purported negligence of the bus operator, with regard to his movement of the bus on which plaintiff was a passenger. There was no collision involved; rather, plaintiff's pleading contended that as the bus traversed the roadway, its movement was "sudden", "excessive" and unduly "abrupt."

6. On November 6, 2015 a unanimous jury determined that the bus operator was not negligent. Thereafter, the presiding justice, the Hon. Thomas Feinman, declined plaintiff's untimely motion to set aside the verdict pursuant to Judge Feinman's Order entered March 2, 2016. What apparently precipitates plaintiff's request for the intervention of this court is the Order of the Appellate Division, Second Department dated June 30, 2016 in which a unanimous panel dismissed plaintiff's appeal of the Order of Judge Feinman entered March 2, 2016.

7. Summarily stated, the order of the Appellate Division, Second Department correctly denied plaintiff's untimely motion to set aside the defense verdict as the right to a direct appeal of Judge Feinman's Order terminated upon entry of the Judgment on April 22, 2016, which plaintiff did not timely appeal.

8. Most respectfully, to the extent plaintiff asks that this court grant

permission to review the unanimous Order of the Appellate Division, Second Department dated June 30, 2016 this court is without authority to do so, by constraint of CPLR §5602(a) as such order is not “final” within the meaning of CPLR §5611.

9. To the extent plaintiff seeks to cure an omission of either plaintiff or her former counsel in relation to the failure to timely file a Notice of Appeal in relation to the April 22, 2016 judgment, this court, as a reviewing court, likewise has no jurisdiction to entertain such application.

10. Moreover, in seeking leave to appeal to this court plaintiff fails to address the *certiori* factors set forth in §500.22(b)(4) of the rules of this court and, even supporting that this court could entertain the motion, such motion does not articulate any persuasive basis for this court’s review. There is no claim by plaintiff that there is a conflict in the departments which requires this court’s resolution on any legal issue; nor, does the outcome of this litigation present any statewide implications. Nor is any novel issue raised. This is simply a matter of an unsuccessful litigant seeking to avail herself of further appellate review.

11. Finally, it does not appear from the papers served on defendant-respondent that plaintiff has tendered to this Honorable court all the papers on which the Order of Hon. Thomas Feinman entered on March 2, 2016 was based, nor any of the papers on which the Order of the Appellate Division, Second Department dated

June 30, 2016 was based in derogation of Rule 500.22(c) of this court.

Procedural History as Relates to this Action

12. As indicated, this is a civil action commenced in the Supreme Court of the State of New York, County of Nassau whereby plaintiff alleged that while a passenger on a bus, the bus was operated in a negligent manner, and by the movement of the bus she was allegedly thereby caused to sustain personal injuries.

13. This is an action in which the plaintiff Soroazam Bethune alleges she sustained personal injuries on August 24, 2011 when she was a passenger on an N79 bus, allegedly consequent to the negligence of the bus operator who, according to plaintiff's complaint, "suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus". (§8 of Plaintiff's Verified Complaint, a copy of which is annexed hereto as **Exhibit "1"**) Plaintiff claims that the movement of the bus caused her to lose her balance and, while she did not fall, she claims to have hit her left ankle on a chair. There was no contact between the bus and any other vehicle.

14. In the pre-trial stages, defendant had moved for summary judgment. A copy of defendant's moving papers (without exhibits) is annexed hereto as **Exhibit "2"**. Such motion was denied by Order of Hon. Angela A. Iannacci dated July 6, 2015, a copy of which is annexed hereto as **Exhibit "3"**. Thereafter, defendant filed a Notice of Appeal in relation to Judge Iannacci's Order, a copy of

which is annexed hereto as **Exhibit “4”**. The Iannacci Order is mentioned herein only to explain its context, since plaintiff quotes from that court’s decision (¶30, Bethune Aff. 7/14/16) and since the docket number 2015-08707 referenced in plaintiff’s motion to this court was the number assigned by the Appellate Division Second Department to *defendant’s* appeal of the Iannacci Order.

15. Importantly, however, the necessity for defendant to pursue an appeal of the Iannacci Order was obviated when the liability portion of a bifurcated trial was conducted before the Hon. Thomas Feinman in the Supreme Court, Nassau County on November 5 and 6, 2015 which resulted in a defense verdict. A unanimous jury determined that defendant MTA Long Island Bus was not negligent. A copy of the relevant pages of the trial transcript wherein the unanimous defense verdict is announced are annexed hereto collectively as **Exhibit “5”**.

16. Accordingly the matter did not proceed to a damages trial.¹ Rather, judgment was entered in favor of the defendant dismissing plaintiff’s complaint.

17. Before entry of judgment, however, plaintiff (through her then counsel, Stuart A. Jackson, Esq.) untimely moved by Order to Show Cause to set aside the defense verdict “on the grounds that such determination was inconsistent

¹ Throughout plaintiff’s affidavit, there are multiple references to her “injuries” having been dismissed (i.e., ¶¶6, 11, 12, 15, 21 of Bethune Aff. 7/14/16). However, plaintiff’s action was dismissed based on the favorable liability verdict. No medical records at all were before the jury in the liability trial.

with the evidence offered at trial”.² Defendant opposed this motion by Affirmation of Michael Paglino, Esq. dated January 7, 2016 with accompanying exhibits. Plaintiff’s counsel tendered a reply affirmation dated January 18, 2016 together with Ms. Bethune’s affidavit sworn to on January 19, 2016 (together with miscellaneous exhibits that were not part of the trial record).

18. Thereafter, the motion was disposed of by the Order of Hon. Thomas Feinman dated March 1, 2016 and entered by the Nassau County clerk on March 2, 2106, whereby the court denied plaintiff’s untimely motion to set aside the defense verdict, a copy of which is annexed hereto as **Exhibit “6”**.

19. Plaintiff, through her then counsel, Stuart A. Jackson, Esq., filed a Notice of Appeal dated March 10, 2016 with regard to Judge Feinman’s Order. Such appeal was assigned docket number 2016-03167. This is the second docket number noted on plaintiff’s papers to this court.

20. Judgment was thereafter entered in favor of the defendant MTA Long Island Bus on April 22, 2016. A copy of the Judgment with Notice of Entry is annexed hereto as **Exhibit “7”**). By reason of CPLR §8101, as “the party in whose favor [] judgment was entered”, a Bill of Costs was awarded to the defendant in the amount of \$1,200.00.

² The verdict was issued on November 6, 2015. Pursuant to CPLR Rule 4405 a motion to set aside a verdict must be made within 15 days of a verdict. Plaintiff did not seek to set the verdict aside until on or about November 30, 2015 when plaintiff’s Order to Show Cause was signed and served on defense counsel (See, CPLR §2211).

21. It appears that on May 4, 2016 plaintiff discharged her counsel. In this regard, plaintiff wrote to the Appellate Division, Second Department on May 4, 2016 advising that she had discharged her counsel in relation to docket numbers 2015-08707 and 2016-03167. No reason for the discharge had been specified in plaintiff's May 4, 2016 letter to the Appellate Division, Second Department (although plaintiff goes to great lengths in her moving papers to this court to express her dissatisfaction with her counsel). Apparently plaintiff was requested to be specific as to which docket numbers the discharge related due to the numerosity of appeals pending in that court by the plaintiff and her daughter.³

22. Thereafter by Notice of Motion dated May 9, 2016 plaintiff (then *pro se*) moved in the Appellate Division, Second Department for an Order granting "poor person" relief, and for the assignment of counsel to represent her in her appeal of Judge Feinman's March 2, 2016 Order. These motion papers were not included by the plaintiff in plaintiff's "Appendix/Attachments" to this court. If these papers were tendered to the court by some other means, affirmant has not been so served or so advised.

³ Notably, in her moving papers to this court plaintiff intersperses comments concerning her other lawsuit against MTA Long Island Bus with regard to an almost identical "accident" that allegedly occurred on April 11, 2011 (§6 of Bethune Aff. 7/14/16). That action commenced under Nassau County Index Number 4148/2012 was thereafter dismissed by Order of Hon. John M. Galasso entered March 14, 2014, which dismissal was then unanimously affirmed by the Order of the Appellate Division, Second Department dated April 27, 2016 under docket number 2014-04947. Now pending in this court is plaintiff's motion for leave to appeal and other related relief with regard to that other lawsuit.

23. By Notice of Cross-Motion dated May 17, 2016 defendant opposed such motion and cross-moved the Appellate Division, Second Department for an order compelling plaintiff to post a bond as “security for costs” pursuant to CPLR §8501 by reason that plaintiff is an out of state resident and that defendant MTA Long Island Bus had twice been awarded costs against the plaintiff as follows, (1) a Bill of Costs in relation to the Judgment that was entered on April 22, 2016; and (2) appellate costs by reason of plaintiff’s unsuccessful appeal in another action plaintiff had brought against MTA Long Island Bus.⁴

24. Defendants’ cross-moving papers to the appellate division are not included in plaintiff’s “Appendix/Attachments” to this court, and neither is plaintiff’s opposition to the cross-motion, nor defendant’s Reply Affirmation dated June 2, 2016. If these papers were tendered to the court by some other means, affirmant has not been so served or so advised.

25. This motion practice culminated in the Order of the Appellate Division, Second Department dated June 30, 2016, a copy of which is annexed hereto as **Exhibit “8”**. By its June 30, 2016 Order, the Appellate Division *sua sponte* dismissed *defendant’s* appeal of the Iannacci Order (docket number 2015-08797). As indicated above, prosecution of this appeal by defendant was

⁴ By the April 27, 2016 Order of the Appellate Division, Second Defendant referenced in footnote 3, defendant-respondent had been awarded costs on appeal.

unnecessary due to the defense verdict at trial. By its June 30, 2016 Order the Appellate Division, Second Department also *sua sponte* dismissed plaintiff's appeal of Judge Feinman's Order entered March 2, 2016 denying plaintiff's untimely motion to set aside the defense verdict (docket no: 2016-03167) finding that the right to direct appeal terminated upon entry of judgment. Finally, as to plaintiff's motion for poor person relief/appointment of counsel and defendant's cross-motion to require plaintiff to post security for costs, the Appellate Division, Second Department's June 30, 2016 order denied both of those motions "as academic".⁵

26. The issue of whether or not plaintiff timely filed a Notice of Appeal with regard to the April 22, 2016 Judgment was not even an issue before the Appellate Division, Second Department, nor did the Appellate Division, Second Department opine on same in its June 30, 2016 Order (Exhibit 8 herein).

27. It appears that the gravamen of plaintiff's complaint to this court is the *sua sponte* relief set forth in the Order of the Appellate Division, Second Department dated June 30, 2016 whereby the appellate division dismissed plaintiff's appeal of Judge Feinman's March 2, 2016 Order denying plaintiff's

⁵ Plaintiff appears to misunderstand the relief set forth by the Appellate Division in its June 30, 2016 Order (Exhibit 8 herein). Defendant's cross-motion to the appellate division requesting that plaintiff be compelled to post a bond as security for costs was denied "as academic" because it was no longer necessary to rule on it because the court had dismissed plaintiff's appeal of Judge Feinman's March 2, 2016 Order (Exhibit 6 herein). The Judgment entered April 22, 2016 awarding defendant the sum of \$1,200 as its Bill of Costs (Exhibit 7 herein) is still in effect.

untimely motion to set aside the verdict on the basis that “the right of direct appeal therefrom terminated upon entry of the final judgment in the above-entitled action on April 22, 2016” relying on Matter of Aho, 39 N.Y.2d 241, 383 N.Y.S.2d 285, 347 N.E.2d 647 (1976).

28. Analysis of this case reveals that the Appellate Division correctly exercised its inherent power to dismiss plaintiff’s appeal of Judge Feinman’s March 2, 2016 Order because plaintiff’s right to appeal terminated upon entry of the subsequent Judgment on April 22, 2016. Plaintiff concedes to this court that no timely appeal was taken of the April 22, 2016 judgment. This court is not imbued with the power to correct an error by a litigant or litigant’s counsel in failing to timely serve and file a Notice of Appeal as is the circumstance in the case *sub judice*.⁶

29. Plaintiff is apparently dissatisfied with her discharged counsel. However, this is not a proper forum for such grievances.

30. There is no dispute that no timely Notice of Appeal was timely filed in the Supreme Court, Nassau County with regard to the Judgment entered on April 22, 2016. The Civil Practice Law and Rules do not permit filings of a Notice of Appeal of a Judgment for the first time in this court. This is a reviewing court

⁶ We take no position as to who, as between plaintiff and her counsel, had failed to file a Notice of Appeal of the Judgment entered on April 22, 2016. We merely point out that on May 4, 2016 when Mr. Jackson was apparently discharged, the time in which to file a Notice of Appeal of the April 22, 2016 Judgment had not yet expired.

who cannot correct omissions made at the *nisi prius* level.

Review By This Court Is Foreclosed By CPLR §5602 Because the Order of the Appellate Division Dismissing Plaintiff's Appeal of a Motion to Set Aside the Verdict Does Not Constitute a "Final" Order as That Term Is Used In CPLR §5611

31. It will be apparent that there is no appeal as of right to this court pursuant to CPLR §5601 from the unanimous Order of the Appellate Division dated June 30, 2016 (Exhibit 8 herein) since there is no dissent as required by subdivision (a), no constitutional issue as required by subdivision (b), nor is the appeal from an order granting a new trial or hearing upon stipulation for judgment absolute (as per subdivision (c)); nor does subdivision (d) apply.

32. Rather, plaintiff seeks the permission of this court for leave to appeal, ostensibly under CPLR §5602. By its terms under subpart (a)(1)(i) permission can be granted "from an order of the appellate division which finally determines the action and which is not appealable as of right" [underscore added]. By reference to CPLR §5611 "if the appellate division disposes of all the issues in the action its order shall be considered a final one...." However, cases are legion in holding that an appeal of an order disposing of a motion to set aside a verdict is not final and is not reviewable by this court.

33. In this regard, it was made quite clear by this court in Butler v. New York City Transit Authority, 14 N.Y.3d 909, 904 N.Y.S.2d 688, 930 N.E.2d 761

(2014) that the disposition of a motion to set aside a verdict, is not by its nature “final” and that no appeal lies in this court from the disposition of the appellate division of such order. In this regard this honorable court stated:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order denying the CPLR 4404 motion to set aside the verdict resolves the issues raised on the CPLR 4404 motion; it does not dispose of all of the issues in the action (see CPLR 5611). The final and appealable paper to the Court of Appeals is the final judgment entered after the denial of the motion or an Appellate Division order resolving an appeal from that judgment

34. More recently, this court in Echostar Satellite LLC v. ESPN, Inc. 21 N.Y.3d 1032, 972 N.Y.S.2d 216, 995 N.E.2d 179 (2013) stated in unequivocal terms:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order affirming the denial of the motion for judgment notwithstanding the verdict and affirming the denial of the motion to set aside the verdict resolves the issues raised on those motions; it does not dispose of all of the issues in the action (see CPLR 5611). The final and appealable paper to the Court of Appeals is the final judgment entered after the denial of the motions, or an Appellate Division order resolving an appeal from that judgment

35. By way of another example, this court in Anderson v. Young &

Rubicam, 14 N.Y.3d 909, 904 N.Y.S.2d 688, 930 N.E.2d 761 (2010) recognized that the appellate division disposition of an order to set aside a verdict is not “final” as that term is used in CPLR §5611 noting:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. The order affirming the denial of the CPLR 4404 motion to set aside the verdict does not finally determine the action

36. Likewise in Cuadraro v. New York City Transit Authority, 14 N.Y.3d 748, 898 N.Y.S.2d 8, 925 N.E.2d 83 (2010), this court determined:

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. An order denying a CPLR 4404 motion to set aside a verdict is nonfinal. The final and appealable paper to the Court of Appeals is the judgment entered after the denial of the motion.

37. In Schwatz v. Nagori, 115 A.D.3d 733, 981 N.Y.S.2d 600 (2nd Dept. 2014), the Appellate Division, Second Department affirmed the trial court’s denial of plaintiff’s motion pursuant to CPLR 4404 to set aside the defense verdict. On motion to this court for leave to appeal, in Schwatz v. Nagori, this court denied the motion at 24 N.Y.3d 994, 997 N.Y.S.2d 105, 21 N.E.3d 556 acknowledging “that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution”.

38. Accordingly it is incontrovertible that per statutory constraint of

CPLR §5602(1), this court is without jurisdiction to hear an appeal of a non-final order, such as the Order of Hon. Thomas Feinman entered March 2, 2016 denying plaintiff's untimely motion to set aside the defense verdict and the Appellate Division's June 30, 2016 disposition of same.

39. Moreover, as indicated above, even if this court had authority to entertain such motion, by this court's own rules, it was incumbent on the plaintiff-appellant to set forth *certiori* factors, which plaintiff fails to do.

40. Therefore, having statutorily been foreclosed plaintiff's motion to this court must be denied.

41. We are constrained however to make further comment.

42. While we understand that a *pro se* litigant's papers may not be held to the same standard as those of a member of the bar, nevertheless, we have seen in far too many of plaintiff's submissions in this case, and in the other matter before this court, liberal use of criticisms, accusations, and the use of derogatory language impugning Judge Feinman, various counsel in the office of the undersigned, and now, her own (former) attorney.

43. While the target of plaintiff in her moving affidavit appears *this time* to be her own former counsel (who is not a participant herein in a position to state the contrary), plaintiff contends in her moving papers that an "MTA attorney was pounding on my head" and yelling at her during the November 2015 trial (§27 of

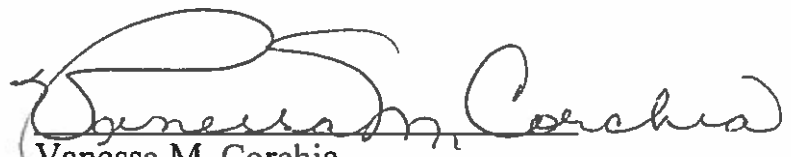
Bethune Aff. 7/14/16). This is fiction and a blatant falsehood that cannot stand unchecked. Perhaps Ms. Bethune was only “waxing poetic”, however, we find it necessary to alert the court of this pattern of conduct and request that plaintiff be cautioned.

44. Additionally, most of plaintiff’s statements to this court are *dehors* the record and raised for the first time.

45. For all the reasons set forth above, plaintiff’s motion must be denied in all respects.

WHEREFORE, it is respectfully requested that this Honorable Court deny plaintiff’s application in its entirety and grant any other such and other further relief as this court may deem just and proper in the premises.

Dated: New York, New York
July 22, 2016


Vanessa M. Corchia

RESP. APP 13

State of New York

Court of Appeals

*Decided and Entered on the
eighth day of September, 2016*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2016-777
Sororazam Bethune,
 Appellant,
 v.
MTA/Long Island Bus,
 Respondent,
et al.,
 Defendant.
(Nassau County Index No. 10773/12)

Appellant having appealed and moved for leave to appeal to
the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

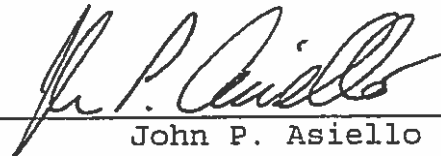
ORDERED, on the Court's own motion that the appeal, insofar
as taken from the March 2016 Supreme Court order and the April
2016 Supreme Court judgment, is dismissed, without costs, as
untimely (see CPLR 5513[a]); and it is further

ORDERED, that the appeal, insofar as taken from the June
2016 Appellate Division order, is dismissed, without costs, upon
the ground that such order does not finally determine the action
within the meaning of the Constitution; and it is further

September 8, 2016

ORDERED, that the motion for leave to appeal, insofar as it seeks leave to appeal from the March 2016 Supreme Court order and the April 2016 Supreme Court judgment, is dismissed as untimely (see CPLR 5513[b]); and it is further

ORDERED, that the motion for leave to appeal, insofar as it seeks leave to appeal from the June 2016 Appellate Division order, is dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution.

A handwritten signature in dark ink, appearing to read "John P. Asiello", is written over a horizontal line.

John P. Asiello
Clerk of the Court



*State of New York
Court of Appeals*

*John P. Asciello
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

Decided September 8, 2016

10. No. 2016-777
Morrazam Bethune,
Appellant,
v.
MTA/Long Island Bus,
Respondent,
et al.,
Defendant.
Nassau County Index No. 10773/12)

On the Court's own motion, appeal, insofar as taken from the March 2016 Supreme Court order and the April 2016 Supreme Court judgment, dismissed, without costs, as untimely (see CPLR 5513[a]); appeal, insofar as taken from the June 2016 Appellate Division order, dismissed, without costs, upon the ground that such order does not finally determine the action within the meaning of the Constitution.

Motion, insofar as it seeks leave to appeal from the March 2016 Supreme Court order and the April 2016 Supreme Court judgment, dismissed as untimely (see CPLR 5513[b]); motion, insofar as it seeks leave to appeal from the June 2016 Appellate Division order, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution.

RESP. APP 14

1700 100

[Fill in the spaces next to the instructions. Other spaces are for Court use.]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
SORORAZAM BETHUNE
[2. Fill in name(s)] Plaintiff(s)/Petitioner(s) [1. Index No. & Year]
Index No. 010773, 2012
NOTICE OF APPEAL

-against-

MTA Long Island BUS
[3. Fill in name(s)] Defendant(s)/Respondent(s)
-----X

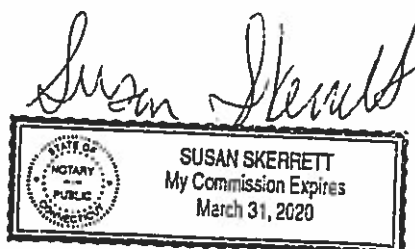
To the Person (s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT [4. Insert Your Name] SORORAZAM BETHUNE
hereby appeals to the Appellate Division of the Supreme Court of the State of New York,
from a [5. Insert Judgment/ Order/ Decree] _____
of the [6. Insert Name of Court] SUPREME COURT, Court, Nassau
County, dated [7. Insert date of Judgment/ Order/ Decree] MAY 9, 2016.

[8. Date and County papers are signed in]

Dated: SEP 18, 2016
County: JAILFRIED, CT

S. Bethune
[9. Your Signature]
SORORAZAM BETHUNE
[10. Your Name]
101 Washington Blvd. (Apt 136)
[11. Your Address]
STAMFORD, CT 06902
[12. City, State & Zip Code]
516-965-1146
[13. Your Phone Number]



#140802

9/18/16

To: [Insert Below the Names, Addresses and Phone Numbers of All Opponents and their attorneys, if any. Use Additional Sheets of paper, if needed. An original of this notice of appeal must be filed with the Nassau County Clerk and copies must be mailed to all opponents by first class mail.]

Armen Ti. De Bellis, et al.
Attorneys for MTA, Defendant
39 Broadway, Suite No. 520
New York, NY 10006

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Solara Zam Bethune

[2. Fill in name(s)]

Plaintiff(s)/Petitioner(s)

[1. Index No. & Year]

Index No.

0107731 2012

CERTIFICATION

PURSUANT TO

22 NYCRR 130-1.1-a

-against-

MTA Long Island Bds

[3. Fill in name(s)]

Defendant(s)/Respondent(s)

I hereby certify that all of the papers that I have served, filed or submitted to the court in this action/proceedings (as indicated by the check marks below) are not frivolous as defined in subsection c of Section 130-1.1 of the Rules of the Chief Administrator of the Courts.

- ☐ Note of Issue
- ☐ Poor Person Order
- ☐ Order permitting alternative service
- ☐ Summons or Summons with Notice
- ☐ Verified Complaint
- ☐ Affidavit of Service or Defendant's Waiver
- ☐ Notice of Appearance
- ☐ Affidavit or Affirmation of Regularity
- ☐ Affidavit of Military Status or Investigator
- ☐ Plaintiff's Affidavit
- ☐ Affidavit of Witness
- ☐ Exhibits

- ☐ Defendant's Affidavit
- ☐ Petition
- ☐ Consent of Infant
- ☐ Consent of Spouse
- ☐ Emergency Affidavit
- ☐ Affidavit in Support of TRO against public officers, etc.
- ☐ Decision
- ☒ Judgment
- ☒ Reply Affidavit
- ☐ Notice of Entry
- ☐ Other

Seven Exhibits (Total 30) (MTA Agency Attorney) -
No. 1, 2, 3, 4, 5, 6, & 7 Reply Affirmation - Non-Prejudicial
Pl. TIPS in June 5, 2015
R. E. Bickel Ind. 11/5/2015
Trial Note.

[4. Date] Dated: Sept. 18, 2016

[5. Plaintiff Signature]

SOLARA ZAM BETHUNE

[6. Print Name]

Duly Sworn to before me this

18th day of September, 2016

Susan Skerrett
[7. Notary Public] #140502



See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

Date Notice of Appeal Filed

☐ 1 Accounting

☐ 2 Discovery

☐ 3 Probate/Administration

☐ 4 Trusts

☐ 5 Other

Appeal

Paper Appealed From (check one only):

- | | | | |
|---|---|--|---|
| ☐ Amended Decree | ☐ Determination | ☒ Order | ☐ Resettled Order |
| ☐ Amended Judgment | ☐ Finding | ☒ Order & Judgment | ☐ Ruling |
| ☐ Amended Order | ☐ Interlocutory Decree | ☐ Partial Decree | ☐ Other (specify): |
| ☐ Decision | ☐ Interlocutory Judgment | ☐ Resettled Decree | |
| ☐ Decree | ☐ Judgment | ☐ Resettled Judgment | |

Court: Supreme Court County: Nassau
 Dated: May 9, 2016 (encl 03/01/16) Entered: May 9, 2016 (encl: 03/01/16)
 Judge (name in full): Justice Thomas Feinman Index No.: 010773 - 2013
 Stage: ☐ Interlocutory ☐ Final ☐ Post-Final Trial: ☒ Yes ☐ No If Yes: ☒ Jury ☐ Non-Jury 1 Day Trial

Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case? ☒ Yes ☐ No. If Yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? ☒ Yes ☐ No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

PP.D. (2016/03/167) Notice of Appeal (Filed: (Entered 03/01/2016) Filed 03/10/16)

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: County:
 Judge (name in full): Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order

Court: County:
 Judge (name in full): Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

I am appealing from Justice Thomas Feinman's Judgment filed on May 9th, 2016. I had previously appealed from Justice Feinman's order dated March 1, 2016 & entered March 2, 2016 on March 10, 2016. My Attorney Stuart A. Jackson, ESQ. called me the end of April & said that JTA had filed a new judgment & that I did not have to pay, and that he filed appeal for Judgment. Evidently, he did not file. He forgot to file. He was released on May 4, 2016.

Amount: If an appeal is from a money judgment, specify the amount awarded.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

I have had a permanent, irreversible life threatening injury which has crippled me in life. I have had spine surgery, lost knee surgery, lost ankle surgery, nerve damage, extrinsic numbness, partial paralysis (cannot move my waist fully to right & left), lose my left leg. Theoretically, I live in a wheelchair. Justice Feinman did not put on such a high standard due to the fact that he would not weigh in on the weight of evidence (for FTA of Justice).

Attached Exhibits: 1, 2, 3, 4, 5, 6 & 7
 EX. 1: Judgment May 9/2016; encl 3/02/2016
 EX. 2: Justice Feinman's order dated July 7, 2015
 EX. 3: Stuart A. Jackson Attorney (Relly/Hill)
 EX. 4: Affidavit of Plaintiff's Attorney
 EX. 5: Plaintiff's Injuries
 EX. 6: "Respectful Request"
 EX. 7: Plaintiff's Testimony

Issues Continued:

(1) Nov. 5, 2015: During 2 hour settlement negotiations; Justice Feinman threatened plaintiff that if she did not take the low settlement offer, that he would throw the jurors' verdict out and Dismiss the Case.

(2) Justice Feinman did not read the "Missing Witness Charge".

(3) Plaintiff was having chest pains, she requested to talk to her attorney before the trial and during the trial, the Court did not allow her to speak to her attorney. She Testified under stress, having chest pains. The plaintiff has Heart Conditions of Atrial Septal Anneurysm ("ASA"); and Heart PFO open hole between right and left Atriums ("PFO").

Use Form B for Additional Appeal Information

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defencant, third party plaintiff, third party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	Sorokazam Bethune	PLAINTIFF	Appellant
2			
3	MTA Long Island Bus	Defendant	Respondent
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: PLAINTIFF, Pro Se - Under Trustee

Address: Attorney not identified, Plaintiff Released on May 4, 2016, held

City: _____ State: _____ Zip: _____ Telephone No.: _____

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☒ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Attorney/Firm Name: ARMISTEAD, DEBELLE, ET AL. (For Defendant)

Address: 39 Broadway, No. 520

City: New York State: N.Y. Zip: 10006 Telephone No.: 212-509-7074

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Attorney/Firm Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone No.: _____

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Attorney/Firm Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone No.: _____

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Attorney/Firm Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone No.: _____

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Attorney/Firm Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone No.: _____

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention (Form A, this document), (2) any required Additional Appeal Information Forms (Form B), (3) any required Additional Party and Attorney Information Forms (Form C), (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

RESP. APP 15

LIB9290
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

FILE COPY

-----X
SORORAZAM BETHUNE,

Plaintiff-Appellant,

-against-

MTA/LONG ISLAND BUS,

Defendant-Respondent,

- and -

"JOHN DOE" first and last name being fictitious said
party intended to be the bus operator of the bus,

Defendant.

MOTION BY:

ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant-Respondent
MTA LONG ISLAND BUS

DATE, TIME AND
PLACE OF HEARING:

30th day of March, 2017 at 9:30 a.m. or as soon
thereafter as counsel can be heard at the courthouse
located at the Appellate Division, Second
Department, 45 Monroe Place, Brooklyn, New York
11201.

SUPPORTING PAPERS:

Affirmation of Vanessa M. Corchia, Esq. dated
March 6, 2017, and upon the attached exhibits herein.

RELIEF DEMANDED:

An Order pursuant to CPLR §5513(a) dismissing
plaintiff's Notice of Appeal dated September 18,
2016 by reason that such appeal is time-barred; and
for such other and further relief as this Court deems
just and proper.

CASE # 4
CASE # 201611032
SUPREME COURT OF NY
APPELLATE DIVISION
2ND JUDICIAL DEPT

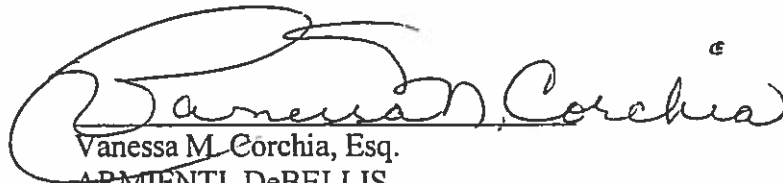
REG 03-07-2017(TUE) 16:38
C04 MC#01 000033

1 MOTIONS \$45.00
TL \$45.00
CHECK \$45.00

ANSWERING PAPERS:

Pursuant to CPLR Rule 2214(b), all answering papers, if any, and any notice of cross-motion with supporting papers, if any, are required to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
March 6, 2017

A handwritten signature in black ink, appearing to read "Vanessa M. Corchia", is written over the printed name and firm information.

Vanessa M. Corchia, Esq.
ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP
Attorneys for Defendant-Respondent
MTA LONG ISLAND BUS
39 Broadway, Suite 520
New York, NY 10006
(212) 809-7074

TO: Sororazam Bethune
Plaintiff *Pro Se*
7 Arcadia Lane, Unit 6401
Shelton, Connecticut 06484

LIB9290
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

-----X
SORORAZAM BETHUNE,

Plaintiff-Appellant,

-against-

MTA/LONG ISLAND BUS,

Defendant-Respondent,

-and-

Docket No.: 2016-11032

AFFIRMATION

Nassau County

Index No.: 10773/2012

"JOHN DOE" first and last name being fictitious said
party intended to be the bus operator of the bus,
Defendant.

-----X
Vanessa M. Corchia, Esq. an attorney duly admitted to practice law before the courts of the
State of New York, hereby affirms the following under the penalties of perjury:

1. Your affirmant is a partner with the law firm of Armienti, DeBellis, Guglielmo &
Rhoden, LLP, attorneys for defendant-respondent, MTA Long Island Bus and, as such I am fully
familiar with the facts and circumstances heretofore had herein.

2. This Affirmation is submitted in support of the within motion which seeks to
dismiss plaintiff's Notice of Appeal dated September 18, 2016, a copy of which is annexed
hereto as **Exhibit "A"**¹ on the basis that such appeal is time-barred. Simply put, defendant-
respondent served the Judgment which plaintiff seeks to appeal, with notice of its entry on May
13, 2016. A copy of the Notice of Entry of the Judgment with proof of service is annexed hereto
as **Exhibit "B"**. Accordingly, the 30 day period accorded by CPLR §5513(a) plus the five (5)
additional days afforded by CPLR §5513(d) and CPLR Rule 2103 expired on June 17, 2016.
Indisputably, the Notice of Appeal filed by the plaintiff on or about September 18, 2016 (Exhibit

¹ Plaintiff's Notice of Appeal dated September 18, 2016 inclusive of exhibits 1 through 7 appended thereto
comprises 130 pages.

A herein) was untimely, thus foreclosing the subject appeal.²

RELEVANT PROCEDURAL HISTORY

3. By this action, plaintiff claims to have sustained personal injuries on August 24, 2011 by reason of the alleged negligence in the operation of defendant's bus. A copy of plaintiff's complaint is annexed hereto as **Exhibit "C"**. A copy of the answer of defendant MTA/Long Island Bus to plaintiff's complaint is annexed hereto as **Exhibit "D."**

4. After a liability trial conducted before the Hon. Thomas Feinman (Supreme Court, Nassau County) on November 5, 2015 and November 6, 2015, the jury returned a defense verdict. Accordingly, judgment was entered in favor of the defendant dismissing the complaint. Thereafter, on May 13, 2016, both plaintiff and plaintiff's then counsel were served with Notice of Entry of the Judgment as reflected in the proof of service included in Exhibit B herein. Accordingly, plaintiff's Notice of Appeal to this court dated September 18, 2016, and served on defendants by mail on September 19, 2016 (per the postage metered stamp on the envelope which contained the Notice of Appeal, a copy of which is annexed hereto as **Exhibit "E"**) is untimely.

ARGUMENT

APPELLANT IS FORECLOSED FROM APPEALING THE JUDGMENT BY REASON THAT PLAINTIFF'S NOTICE OF APPEAL DATED SEPTEMBER 18, 2016 WAS UNTIMELY

5. Plaintiff's appeal is inarguably untimely. The relevant statute, CPLR §5513(a) provides a mandatory time frame for a party to take an appeal as follows: "An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry...." While CPLR §5513(a)

² No appeal has yet been perfected consequent to the September 18, 2016 Notice of Appeal.

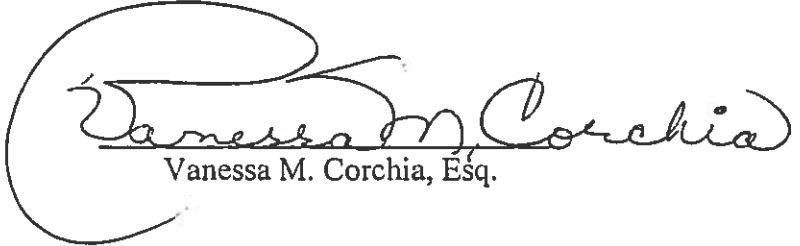
provides a deadline to file a Notice of Appeal for no later than 30 days after service with Notice of Entry, where, as in this case, service was made by regular mail, an additional five (5) days is added pursuant to CPLR §5513(d) and CPLR Rule 2103, making the deadline 35 days. Thus, the 35 days from May 13, 2016 in which plaintiff had to file a Notice of Appeal of the Judgment expired on June 17, 2016, three months prior to September 18, 2016, the date of the Notice of Appeal. Indeed this mandatory statutory timeframe (that is 30 days, plus an additional five days for mailing) has been strictly enforced by this court. See, e.g. Ashton v. Morris M. Goldberg, P.C., 201 A.D.2d 602, 612 N.Y.S.2d 866 (2nd Dept. 1994); Aetna Casualty & Surety Co., v. D'Elia, 149 A.D.2d 587, 540 N.Y.S.2d 679 (2nd Dept. 1989); Bernstein v. Board of Appeals, 31 A.D.2d 650, 297 N.Y.S.2d 702 (2nd Dept. 1968);

6. Plaintiff's *pro se* status does not relieve her of the obligation for timely filing a Notice of Appeal. Pravda v. N.Y. State DMV, 286 A.D.2d 838, 730 N.Y.S.2d 746 (3rd Dept. 2001).

7. Therefore, by reason that plaintiff's Notice of Appeal dated September 18, 2016 was untimely by some three months, plaintiff's Notice of Appeal dated September 18, 2016 must be dismissed.

WHEREFORE, it is respectfully requested that this honorable court grant the within motion and any such and other further relief as to this court may be deemed just and proper.

Dated: New York, New York
March 6, 2017


Vanessa M. Corchia, Esq.

RESP. APP 16

LIB9290

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

-----X
SORORAZAM BETHUNE,

Plaintiff-Appellant,

-against-

MTA/LONG ISLAND BUS,

Defendant-Respondent,

-and-

Docket No.: 2016-11032

REPLY AFFIRMATION

Nassau County

Index No.: 10773/2012

“JOHN DOE” first and last name being fictitious said
party intended to be the bus operator of the bus,

Defendant.

-----X

Vanessa M. Corchia, Esq. an attorney duly admitted to practice law before the courts of the
State of New York, hereby affirms the following under the penalties of perjury:

1. Your affirmant is a partner with the law firm of Armienti, DeBellis, Guglielmo &
Rhoden, LLP, attorneys for defendant-respondent, MTA Long Island Bus and, as such I am fully
familiar with the facts and circumstances heretofore had herein.

2. This Affirmation is submitted in reply to the Affidavit of Sororazam Bethune,
plaintiff *pro se*, sworn to on March 27, 2017 (hereinafter “Bethune Aff.”). This affirmation is
also submitted in further support of defendant’s motion pursuant CPLR §5513(a) seeking to
dismiss plaintiff’s Notice of Appeal dated September 18, 2016 which was served more than three
months after defendant served Notice of Entry of the Judgment which plaintiff seeks to appeal.

3. Summarily stated, plaintiff nowhere disputes that her Notice of Appeal dated
September 18, 2016 was served three months beyond the statutorily prescribed period.
Therefore this court is without jurisdiction to hear plaintiff’s appeal. While verbose, very little is
actually said in plaintiff’s affidavit relevant to the narrow legal issue before the court on this
motion. Rather the bulk of plaintiff’s affidavit is scurrilous constituting inappropriate

accusations and a myriad of disjointed irrelevancies. While most of the content of plaintiff's affidavit is patently absurd, I first address herein the actual legal issue that is before the court on this motion, and then am constrained to correct the inaccuracies and address the accusations in plaintiff's affidavit.

THIS COURT IS WITHOUT JURISDICTION TO ENTERTAIN AN UNTIMELY APPEAL OF THE JUDGMENT AND THEREFORE PLAINTIFF'S NOTICE OF APPEAL DATED SEPTEMBER 18, 2016 MUST BE DISMISSED

4. As reflected in the moving affirmation of Vanessa M. Corchia, Esq. dated March 6, 2017, the liability trial conducted before a jury presided over by the Hon. Thomas Feinman (Supreme Court, Nassau County) on November 5, 2015 and November 6, 2015, resulted in a defense verdict. As a result, judgment was then entered in favor of the defendant dismissing plaintiff's complaint. As also reflected in the moving affirmation (and not challenged), that thereafter, on May 13, 2016, both plaintiff and plaintiff's then counsel were served with Notice of Entry of the Judgment as reflected in the proof of service included in Exhibit B to the moving papers. Inarguably, CPLR §5513(a) provides a deadline to file a Notice of Appeal for no later than 30 days after service with Notice of Entry, and where, as in this case, service was made by regular mail, an additional five (5) days is added pursuant to CPLR §5513(d) and CPLR Rule 2103, making the deadline 35 days. Thus, the 35 days from May 13, 2016 in which plaintiff had to file a Notice of Appeal of the Judgment expired on June 17, 2016, three months prior to September 18, 2016, the date of the Notice of Appeal. None of this is disputed. Dismissal of the appeal is therefore warranted as this court is without jurisdiction to entertain the appeal.

5. In this regard the Court of Appeals has categorically held that "[t]he power of an appellate court to review a judgment is subject to an appeal being timely taken. Hecht v. City of

New York, 60 N.Y.2d 57, 61, 677 N.Y.S.2d 187, 189, 454 N.E.2d 527 (1983). See also, Ocean Accident & Guarantee Corp. v. Otis Elevator Co., 291 N.Y. 254, 52 N.E.2d 421 (1943); Malik Coughlin, 127 A.D.2d 948, 512 N.Y.S.2d 548 (3rd Dept. 1987) . Indeed, a motion to dismiss an appeal can be raised at any time can be raised at oral argument of an appeal because it is a jurisdictional defect. Roy v. National Grange Mut. Ins. Co., 85 A.D.2d 832, 446 N.Y.S.2d 423 (3rd Dept. 1981). Thus, the failure of plaintiff to have timely served/filed a Notice of Appeal of the Judgment in the office of the Nassau County Clerk is a fatal jurisdictional defect.

6. A jurisdictional defect cannot be overcome by plaintiff's contention that the failure to have timely filed a Notice of Appeal of the judgment lies with her then attorney, Mr. Stuart A. Jackson, Esq. To the extent plaintiff has any dispute with her former attorney as to the handling of her case, this is not the forum to address such matters.

7. Plaintiff's Notice of Appeal dated September 18, 2016 was admittedly untimely, and therefore dismissal of such appeal is mandated by application of CPLR §5513(a) and the jurisdictional constraints of this court.

THE ACCUSATION THAT DEFENDANT NEVER ANSWERED THE COMPLAINT AND BACKDATED THE ANSWER THAT WAS INCLUDED AS AN EXHIBIT IN THE MOVING PAPERS TO THIS COURT IS PATENTLY FALSE AND ABSURD

8. Included in the moving papers as Exhibit D is the answer of defendant MTA Long Island Bus dated November 9, 2012 and served on plaintiff's then counsel on November 13, 2012. There is no requirement that a party file an answer with the court— only that the answer be served (CPLR Rule 320). And...according to CPLR Rule 2103(b) "Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney". Accordingly, the answer was required by statute to be served

on plaintiff's counsel – *not* the plaintiff.

9. As of the time of service of defendant's answer, plaintiff's counsel was the Law Office of Kevin A. McCarthy. (See Complaint – Exhibit C to moving papers.) The affidavit of service of defendant's answer (included in Exhibit D to the moving papers) reflects service of the answer on November 13, 2012 on the Law Office of Kevin A. McCarthy.

10. Thus, while it is correct that defendant did not *file* its answer with the Nassau County Clerk in November of 2012, such was not statutorily required. Moreover as plaintiff was then represented by the Law Office of Kevin A. McCarthy, that is the entity upon whom the answer was to be served – and who was in fact served with the answer.¹ Thus plaintiff's repeated statements in her affidavit that she herself was not served with defendant's answer is legally irrelevant (as indeed is her entire discourse on this issue).

11. While plaintiff *pro se* may not be acquainted with the Civil Practice Law and Rules of this state, there is no excuse for her blatant mistruth to this court that the copy of the answer included as Exhibit D to the moving papers was "Drafted/created recently in March, 2017, and backdated to Nov. 9, 2012..." (Bethune Aff., ¶2). Lack of knowledge of the court rules does not permit a *pro se* individual *carte blanche* to make false statements to the court.

12. Indeed, had plaintiff but fully reviewed the Nassau County Clerk's file she would have seen that on multiple occasions the November 2012 answer of the defendant was included as an exhibit in various motion papers. For example, in a motion filed by defendant in November 2014 seeking to strike plaintiff's *errata* sheet, defendant's answer was attached as an exhibit to the supporting affirmation dated October 29, 2014, which affirmation (without

¹ While at the commencement of the action plaintiff was originally represented by the Law Office of Kevin A. McCarthy, in or about November 2013 he was discharged as counsel. See Exhibit "A" attached hereto- Stipulation dated November 21, 2013. Thereafter per the retainer plaintiff includes in her papers, plaintiff retained Stuart A. Jackson, Esq. in or about March 2014 until plaintiff discharged him in May 2016.

exhibits) is included within **Exhibit “B”** annexed hereto; in a motion filed by defendant in April 2015 seeking summary judgment, defendant’s answer was attached as an exhibit to the supporting affirmation dated April 14, 2015, which affirmation (without exhibits) is included within **Exhibit “C”** annexed hereto²; and in the Affirmation of Michael J. Paglino dated January 7, 2016 (a copy of which is annexed hereto as **Exhibit “E”** - without exhibits) opposing plaintiff’s motion to set aside the verdict, a copy of defendant’s answer was included as an exhibit. These are but a few examples. It is incredulous to assert that a case went through the discovery phase all the way through trial, yet without an answer ever having been served – yet plaintiff does so.

**NO MALFEASANCE OCCURRED IN THE
DETERMINATION TO INCLUDE A COPY OF THE
COMPLAINT IN THE MOVING PAPERS, BUT NOT A
COPY OF THE SUMMONS**

13. Plaintiff further seeks to malign the undersigned by contending that there was malfeasance in including a copy of plaintiff’s complaint as an exhibit to the subject dismissal motion, but not a copy of the Summons. Indeed, the only reason the complaint was included by movant, was to establish the type of action and the allegations that were made against the defendant – which would *not* have been evident by the summons. Nor was the complaint even a required exhibit to the subject motion. How the determination to include a copy of the complaint but not the summons with the subject motion to dismiss can be construed to have been malevolent is baffling. While I am confident the court will see the absurdity of this all, nevertheless it is disturbing that plaintiff appears to be of the belief that statements can be made

² While defendant’s motion for summary judgment was denied by Order of Hon. Angel Iannacci dated July 6, 2015, thereafter, defendant prevailed before a trier of fact (the jury) at trial who determined that defendant was not negligent (See Trial Transcript – page 155 – annexed hereto as **Exhibit “D”**). Judge Iannacci’s determination on the prior summary judgment motion is therefore an irrelevancy to these proceedings, but I mention it only because plaintiff appears to place some significance to it.

to this court without any bearing as to their veracity. In this regard plaintiff further makes the claim in her affidavit that the undersigned “accus[ed] plaintiff of not filing Summons with Verified Complaint in 2012” (Bethune Aff., §B heading, p. 3). That this is clearly not so is manifest from a reading of defendant’s moving papers. Such statement was clearly not made by the undersigned.

14. Again, this is an irrelevancy, and might be considered a small point, yet, plaintiff’s multiple accusatory and false statements cannot be permitted to go unchecked.

**PLAINTIFF’S ACCUSATIONS AS TO THE CONDUCT OF
THE TRIAL ARE BEREFT OF EVIDENTIARY SUPPORT,
UNPRESERVED AND ARE IRRELEVANT TO THE LACK
OF TIMELINESS OF THE APPEAL**

15. Plaintiff devotes the bulk of her papers casting aspersions on the trial judge, on defense trial counsel and on her own counsel. Notably, no such conduct is manifest by a review of the trial transcript, nor were any of these issues raised during the trial.

16. For example at page 16 §V. of the Bethune Aff., plaintiff sets forth a statement in quotation marks claiming that Judge Feinman told the jury that “Trust me, you don’t want to come back tomorrow, you don’t want to be here wast[ing] your time on this case. Just go home today, back to work, tomorrow. I know you [would] rather be at work than being here in the box. Just return your verdict in the afternoon.” Essentially she is claiming Judge Feinman told the jury they shouldn’t waste their time on her case and basically to rush to verdict so they could be done with it. **This is pure fiction.** It is an outrage that Ms. Bethune crafted an untrue statement and proffered it to this court, setting it forth in quotation marks to give it verisimilitude as being an actual verbatim quote, and attributing it to Judge Feinman. Tellingly the plaintiff does not submit Judge Feinman’s actual jury instructions to the court which reveal just the opposite, that is, that the jury was told that their determination of the case was of great import

and that they should and take as much time as needed for thoughtful deliberation. A review of the actual statements made by Judge Feinman to the jury prior to the jury's deliberations was this:

Your function - - to reach a fair decision from the law and the evidence - - and is an important one...Remember in your deliberations the dispute between the parties is, for them, a very important matter. They and the Court rely upon you to give full and conscientious deliberation and consideration to the issues and evidence before you. By so doing, you carry out to the fullest your oaths as jurors to truly try the issues of this case and render a true and just verdict.

* * * *

Similarly, I've had juries that have been out one minute, I've had juries that have been out one hour and one day. We don't judge you on how long it takes you to come to a conclusion. If it's clear in your mind, well then, come back with a quick verdict. If it's not, discuss it and take whatever time you need.

Trial Transcript at pages 146-149, copies of which are annexed hereto as **Exhibit "F"**.

17. The technique of putting statements in quotations to suggest they are the actual words spoken by various people is a common thread throughout plaintiff's papers and is clearly inappropriate. We vehemently deny any misconduct occurred during the trial; there was no

motion made for a mistrial; and baseless accusations of defense trial counsel having purportedly screamed and yelled at plaintiff during her trial testimony are unsupported by the record. In any event, all of this is besides the point of this motion which is solely concerned with the timeliness of the Notice of Appeal dated September 18, 2016.

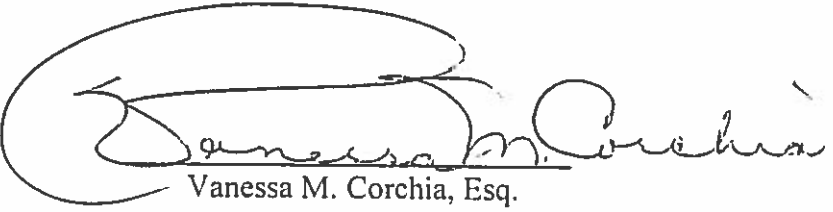
18. Whatever plaintiff might seek to raise as appellate issues, such is inappropriate in the context of this motion which is limited to the untimeliness of the Notice of Appeal and hence the lack of jurisdiction of this court over an appeal of the Judgment.

19. Further, plaintiff talks at length about injuries she believes that she sustained consequent to the subject motor vehicle accident. Such is irrelevant to the narrow legal issue before the court. Moreover, as the trial was bifurcated, the only issue before the jury was liability which was found in favor of the defendant. (See Exhibit D herein.) Whether or not plaintiff sustained any causally related injuries was not before the jury – and thus not an issue properly raised on an appeal of the judgment. No evidence of alleged injuries/damages was before the court below (nor could such evidence had properly been tendered at the liability trial) and thus plaintiff's lengthy discourse on alleged injuries/damages and the submission of documents *dehors* the record as to alleged injuries/damages are not relevant to the narrow issue before this court on this motion.

20. Therefore, by reason that plaintiff's Notice of Appeal dated September 18, 2016 was untimely by some three months, plaintiff's Notice of Appeal dated September 18, 2016 must be dismissed.

WHEREFORE, it is respectfully requested that this honorable court grant the within motion and any such and other further relief as to this court may be deemed just and proper.

Dated: New York, New York
March 29, 2017



Vanessa M. Corchia, Esq.

RESP. APP 17

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M230789
E/afa

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
JOSEPH J. MALTESE
COLLEEN D. DUFFY, JJ.

2016-11032

DECISION & ORDER ON MOTION

Sororzam Bethune, appellant,
v MTA/Long Island Bus, et al., respondents.

(Index No. 10773/12)

Motion by the respondents to dismiss an appeal from a judgment of the Supreme Court, Nassau County, entered April 22, 2016, as untimely taken. Application by the appellant pursuant to 22 NYCRR 670.8(d)(2) to enlarge the time to perfect the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the papers filed in support of the application and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion is granted and the appeal is dismissed, without costs or disbursements (*see* CPLR 5513[a]); and it is further,

ORDERED that the application is denied as academic.

BALKIN, J.P., CHAMBERS, MALTESE and DUFFY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

May 10, 2017

BETHUNE v MTA/LONG ISLAAND BUS

RESP. APP 18

ARMIENTI, DeBELLIS, GUGLIELMO & RHODEN, LL

FILE COPY

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PLEASE RESPOND TO NEW YORK OFFICE

June 28, 2017

VIA UPS OVERNIGHT MAIL

Clerk of the Court
New York Court of Appeals
20 Eagle Street
Albany, NY 12207-1009

Att: Heather Davis
Deputy Clerk

Re: Sororazam Bethune v. MTA Long Island Bus
Court of Appeals Motion No.: 2017-679
Nassau County Index No.: 10773/2012
App. Div., 2nd Dept. Docket No.: 2016-11032
Our File No.: LIB9290

Dear Ms. Davis:

The office of the undersigned is counsel for defendant/respondent MTA Long Island Bus in the above-referenced matter.

On June 22, 2017 our office received correspondence from this Honorable Court dated June 20, 2017 inviting comment on the issues *sua sponte* raised concerning whether (1) a substantial constitutional question is directly involved to support an appeal taken as of right; or, (2) whether any other jurisdictional predicate exists for an appeal *as of right*. As more fully set forth below, no constitutional question is raised either directly (or indeed indirectly) as to plaintiff's attempted

appeal of the Judgment entered by the Nassau County Clerk on April 22, 2016 which judgment dismissed plaintiff's complaint based on a defense verdict by the jury; nor, is there any other jurisdictional predicate for an appeal as of right as to the Judgment. Nor is there any basis for an appeal as of right with regard to plaintiff's attempted appeal of the Order of the Appellate Division, Second Department dated May 10, 2017 (as to which plaintiff seeks permission to appeal) which Appellate Division Order dismissed plaintiff's appeal of the Judgment pursuant to CPLR §5513(a) based on the untimeliness of plaintiff's Notice of Appeal.

Disclosure Statement pursuant to §500.1(f) of the Rules of this court

Defendant/respondent Metropolitan Suburban Bus Authority d/b/a and s/h/a MTA/Long Island Bus was formerly a wholly owned subsidiary of the Metropolitan Transportation Authority. MTA Long Island Bus ceased operations as of December 31, 2011.

Background of facts to place jurisdictional issues in context

This is a civil tort action commenced by plaintiff by the filing of a Summons and Complaint in the Supreme Court, Nassau County in which the plaintiff claims to have sustained personal injuries on August 24, 2011 by reason of the purported negligence of the defendant in the operation of a bus on which plaintiff was a passenger. The nature of the claim against defendant is common law negligence. Plaintiff-appellant alleged in her complaint, *inter alia*, that she sustained personal injuries on August 24, 2011 when she was a passenger on an N79 bus, allegedly consequent to the negligence of the bus operator who, according to plaintiff's complaint, "suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus".

The liability portion of a bifurcated trial was conducted on November 5th and 6th, 2015 in the Supreme Court, County of Nassau presided over by the Hon. Thomas Feinman. By unanimous verdict on November 6, 2015, the jury determined that defendant-respondent was not negligent. Therefore no damages trial needed to be conducted. Judgment on the defense verdict was entered on April 22, 2016.

Notice of Entry of the Judgment was served by mail on both the plaintiff and on her former counsel, Stuart A. Jackson, Esq. on May 13, 2016.¹

More than four months later, on September 19, 2016, plaintiff (at this time *pro se*), filed a Notice of Appeal dated September 18, 2016 referable to the Judgment with the Nassau County Clerk.

By Notice of Motion dated March 6, 2017, defendant-respondent moved in the Appellate Division, Second Department to dismiss plaintiff's appeal of the Judgment as it was untimely served/filed beyond the 30 day period set forth in CPLR §5513(a) thereby depriving the appellate court of jurisdiction. **By Order dated May 10, 2017 the Appellate Division, Second Department dismissed plaintiff's appeal of the judgment as untimely citing CPLR §5513(a).** Notice of entry of the May 10, 2017 Order of the Appellate Division, Second Department was served on plaintiff by mail on May 11, 2017.²

Thereafter, by Notice of Motion dated June 8, 2017, plaintiff *pro se* filed a motion in the Appellate Division, Second Department seeking, *inter alia*, reargument and, alternatively, seeking the permission of the Appellate Division for leave to appeal its May 10, 2017 Order to this court. That motion was returnable in the Appellate Division, Second Department on June 23, 2017 and is currently pending.

¹ Plaintiff omitted the Notice of Entry of the Judgment from her motion papers to this court. Defendant-respondent has provided a copy of same as Exhibit 9 to defense counsel's Affirmation in Opposition dated June 23, 2017 filed in relation to plaintiff's motion for leave to appeal.

² Plaintiff omitted the Notice of Entry of the Appellate Division's May 10, 2017 Order from her motion papers to this court. Defendant-respondent has provided a copy of same as Exhibit 1 to defense counsel's Affirmation in Opposition dated June 23, 2017 filed in relation to plaintiff's motion for leave to appeal.

Simultaneously, by Notice of Motion also dated June 8, 2017 plaintiff *pro se* sought relief from this court including *permission* to appeal the May 10, 2017 Order of the Appellate Division, Second Department which order had dismissed plaintiff's untimely appeal of the Judgment. That motion was returnable in this court on June 26, 2017 and is pending.

Also, at the same time, plaintiff *pro se* served/filed a Notice of Appeal in this court dated June 8, 2017 purporting to appeal "from the Judgment of Sup. Ct., Nassau County entered on 4/22/16 and Order [illegible]".³

On plaintiff's "Preliminary Appeal Statement" to this court plaintiff marked the first box set forth under question (5) as to the jurisdictional bases of her purported June 8, 2017 appeal as follows:

- ☒ Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals.

However, leave to appeal was not granted by the Court of Appeals. Rather, by plaintiff's motions which were simultaneously made to both the Appellate Division, Second Department and to this court by Notice(s) of Motion both dated June 8, 2017, plaintiff is now seeking, *inter alia*, leave to appeal to the Court of Appeals which motions are currently pending in the respective courts.

Plaintiff *pro se* did not mark as a jurisdictional basis, any of the categories that would permit an appeal as of right to this court, and, indeed there are none.

³ No copies of the documents plaintiff is attempting to appeal were attached to her June 8, 2017 Notice of Appeal that had been served on defendant-respondent, but rather, only a 6 page "Preliminary Appeal Statement".

As to item 6 in her "Preliminary Appeal Statement" plaintiff-appellant filed in:

NOTICE OF APPEAL Date filed: Sept.19, 2016
Clerk's office where filed: Nassau County
Clerk. Mineola

This refers to plaintiff's untimely Notice of Appeal of the Judgment which plaintiff filed with the Nassau County Clerk on September 19, 2016 but which was three months beyond the time specified in CPLR §5513(a) since Notice of Entry had been served on plaintiff and her counsel on May 13, 2016.

As set forth more fully below, most respectfully this court lacks the subject matter jurisdiction to entertain plaintiff's proposed appeal. Both of the issues this court delineated in its June 20, 2017 correspondence are discussed more fully below.

Issue (1): Whether a substantial constitutional question is directly involved to support an appeal taken as of right under CPLR 5601.

Civil Practice Law and Rules, section 5601 sets forth the intractable criteria which can support an appeal *as of right*, none of which apply to the matter *sub judice*.

By its June 20, 2017 correspondence this court first invites the litigants to opine on "whether a substantial constitutional question is directly involved to support an appeal taken as of right".

CPLR §5601(b) entitled "Constitutional grounds" contains four subparts. As to CPLR §5601(b)(1) an appeal *as of right* to the Court of Appeals lies "from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States" [underscore added]. The action brought by plaintiff-respondent herein is a garden variety tort action in which plaintiff claimed *common law* negligence by the defendant in driving a bus on which plaintiff was a passenger. The Judgment

entered after a jury verdict in favor of defendant finding that defendant was not negligent did not involve construction of either the state or the federal constitution; nor, were any constitutional issues implicated by the disposition of the Appellate Division, Second Department in its May 10, 2017 Order dismissing plaintiff's Notice of Appeal filed on September 19, 2016 as untimely. The appellate division simply applied CPLR §5513(a) which sets forth the applicable time frame in which plaintiff's appeal from the Judgment was required to have been taken.

Notably, plaintiff did not contend in her "Preliminary Appeal Statement" that her attempted appeal to this court was being made pursuant to this subpart – CPLR §5601(b)(1).

Issue (2): Whether any other jurisdictional predicate exists for an appeal *as of right* under CPLR 5601.

Going down each sub-part in order, the first is CPLR §5601(a) entitled "Dissent", which, among other things, requires "a dissent by at least two justices [of the appellate division] on a question of law in favor of the party taking such appeal". The May 10, 2017 Order of the Appellate Division, Second Department dismissing plaintiff's appeal of the Judgment based on its untimeliness was unanimous. Notably, plaintiff did not contend in her "Preliminary Appeal Statement" that her attempted appeal to this court was being made pursuant to this subpart.

We have already discussed the inapplicability of CPLR §5601(b)(1) under the heading "Constitutional Grounds".

As to CPLR §5601(b)(2) (also under the heading "Constitutional grounds"), an appeal *as of right* to the Court of Appeals will lie "from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States" [underscore added]. This subpart is plainly inapplicable to either the Judgment entered on April 22, 2016 by the Nassau County Clerk, *or* to the Order of the Appellate Division, Second Department dated May 10, 2017. As to the Judgment,

such clearly did not involve the validity of a statutory provision of the state or the United States. Rather, the jury had before it evidence on which it determined that the bus operator was not negligent. As to the May 10, 2017 Order of the Appellate Division, which dismissed plaintiff's appeal as untimely, the Appellate Division was not the "court of record of original instance" nor does its order involve the validity of a statute under the state or federal constitution.

As to CPLR §5601(c), while the main subdivision is "Constitutional grounds", the title of this particular sub-part reflects that an appeal to this court lies "From order granting new trial or hearing, upon stipulation absolute". The text then elaborates. Manifestly the May 10, 2017 Order of the appellate division did not grant or affirm the grant of a new trial and this subpart affords no basis for an appeal as of right. Nor was the judgment based on a stipulation. Additionally, this subpart does not authorize direct appeal to this court of an appeal of a Judgment after a jury trial. Indeed that appeal was dismissed by the Appellate Division in its May 10, 2017 Order based on untimeliness.

As to CPLR §5601(d) (also under the heading "Constitutional grounds"), the statute indicates that an appeal *as of right* may be taken to this court "from a final judgment entered in a court of original instance, from a final determination of an administrative agency or from a final arbitration award, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality" [emphasis added].

Subpart (d) of CPLR §5601 affords no basis for this court's subject matter jurisdiction. As to the Judgment entered on April 22, 2016 in the Supreme Court, Nassau County, this judgment was entered upon the jury verdict and there was no subsequent appellate division order which "necessarily affected" that judgment. Even if there were an appellate division order which "necessarily affected" that judgment, there is nevertheless a qualifier that is not met, to wit, there still must have been *either* a dissent to meet the requirements of subdivision (a) of CPLR §5601 – *or* – construction of a state or constitutional question must be directly involved

under subdivision 1(b) of CPLR §5601 as subpart (d) incorporates those requirements by reference.

Moreover, as this court will perceive, regardless of any right of direct appeal (which there is not), neither plaintiff nor her counsel timely appealed the Judgment entered on April 22, 2016 and absent a timely appeal, consideration by this court is foreclosed in any event.

For the reasons set forth herein, this court is without subject matter jurisdiction over plaintiff's attempted direct appeal of either the Judgment entered in the Supreme Court Nassau County on April 22, 2016 or of the Order of the Appellate Division, Second Department dated May 10, 2017 dismissing an appeal of the judgment as untimely, and therefore plaintiff's Notice of Appeal to this court dated June 8, 2017 must be dismissed.

Thanking this court for its time and attention, I remain,

Respectfully,

**ARMIENTI, DeBELLIS,
GUGLIELMO & RHODEN, LLP**


By: Vanessa M. Corchia

VMC:loh

Enclosure: Affidavit of Service of letter

cc: Via Regular Mail (without enclosure)
Sororazam Bethune
Plaintiff *pro se*
7 Acadia Lane, Unit 6401
Shelton, Connecticut 06484

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

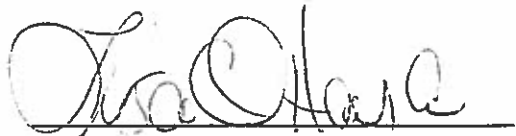
LISA O'HARA, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Queens County, New York.

That on the 28th day of June, 2017, deponent served by regular mail one copy of the within: **letter addressed to Heather Davis, Deputy Clerk of The New York Court of Appeals dated June 28, 2017** upon:

Sororazam Bethune
Plaintiff *pro se*
7 Acadia Lane, Unit 6401
Shelton, Connecticut 06484

which addresses is/are designated by said *Pro Se* appellant for such purpose, by depositing a true copy thereof, enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


LISA O'HARA

Sworn to before me this
28th day of June, 2017


Notary Public

Vanessa Mary Corchia
Notary Public, State of New York
No.: 02C06285062
Qualified in Queens County
Commission expires 7/01/2021

RESP. APP 19

STATE OF NEW YORK
COURT OF APPEALS

-----X
SORORAZAM BETHUNE,

Plaintiff-Appellant,

Nassau County
Index No.:
10773/2012

-against-

MTA/LONG ISLAND BUS,

Defendant-Respondent,

App. Div. 2nd Dept.
Docket No:
2016-11032

-and-

“JOHN DOE” first and last name being fictitious said
party intended to be the operator of the bus,

**AFFIRMATION IN
OPPOSITION**

Defendant.

(Return date:
June 26, 2017)

-----X
Vanessa M. Corchia, an attorney duly admitted to practice law before the
courts of the State of New York, hereby affirms the following under the penalty of
perjury:

1. Your affirmant is a partner of the firm Armienti, DeBellis,
Guglielmo & Rhoden, LLP, attorney for defendant-respondent MTA/Long Island
Bus in the above-referenced matter.

2. I make this affirmation on behalf of defendant-respondent
MTA/Long Island Bus in opposition to the omnibus motion of the plaintiff-
appellant *pro se* by Notice of Motion dated June 8, 2017 seeking leave to appeal to

this court from the Order of the Appellate Division, Second Department, dated/entered May 10, 2017 by which order the appellate division correctly dismissed plaintiff's appeal from the Judgment entered upon a defense verdict dismissing plaintiff's complaint based on the fact that plaintiff's Notice of Appeal dated September 18, 2016 was untimely leaving that court without jurisdiction to entertain an appeal of the Judgment.

3. This affirmation is also submitted in support of plaintiff's motion seeking poor person relief and for the appointment of counsel to prosecute an appeal in this court.

4. Finally, this affirmation is additionally submitted in opposition to plaintiff's motion to the extent plaintiff may be seeking a *default* judgment against defendant notwithstanding defendant prevailed at trial and plaintiff's complaint was dismissed. In this regard plaintiff mistakenly contends to this court that defendant did not answer the complaint, which assertion is squarely rebutted by the filings and proceedings in the Supreme Court.

5. I am fully familiar with the facts and circumstances set forth herein based on my review of the litigation file maintained by our office.

DISCLOSURE STATEMENT

6. Metropolitan Suburban Bus Authority d/b/a and s/h/a MTA/Long Island Bus was formerly a wholly owned subsidiary of the

Metropolitan Transportation Authority. MTA Long Island Bus ceased operations as of December 31, 2011.

Summary of Bases for Denial of Review By This Court

7. This is a civil tort action by which plaintiff seeks to recover for personal injuries allegedly sustained on August 24, 2011 by reason of the purported negligence of a bus operator, with regard to his movement of the bus on which plaintiff was a passenger. There was no collision involved; rather, plaintiff's pleading contended that as the bus traversed the roadway, its movement was "sudden", "excessive" and unduly "abrupt."

8. The matter came on for trial which was bifurcated. On November 6, 2015 a unanimous jury determined that the bus operator was not negligent. The verdict was thereafter reduced to a judgment entered by the Nassau County Clerk which was then served on both plaintiff and plaintiff's counsel with notice of entry on May 13, 2016.

9. Plaintiff filed a Notice of Appeal of the Judgment with the Nassau County Clerk on September 19, 2016 which is three months past the statutorily mandated time-frame afforded by CPLR §5513(a) thereby depriving the appellate court of jurisdiction to entertain an appeal.

10. Therefore defendant moved in the Appellate Division, Second Department pursuant to CPLR §5513(a) to dismiss plaintiff's appeal which motion

was granted by Order of the Appellate Division, Second Department dated and entered on May 10, 2017. A copy of the order of the Appellate Division, Second Department dated May 10, 2017 with Notice of Entry served on plaintiff *pro se* by mail on May 11, 2017 is annexed hereto as **Exhibit “1”**. This is the order from which plaintiff seeks to take an appeal.

11. The May 10, 2017 order of the Appellate Division, Second Department correctly dismissed plaintiff’s appeal as untimely.

12. Indeed, plaintiff does not dispute the appeal was untimely. She blames her former attorney, Stuart A. Jackson, Esq. for having “forgotten” to appeal from the Judgment.

13. However, such is not a basis to disturb the finding of the appellate division in this regard.

14. Moreover, in seeking leave to appeal to this court plaintiff fails to address the *certiori* factors set forth in §500.22(b)(4) of the rules of this court and, even supposing that this court could entertain the motion, such motion does not articulate any persuasive basis for this court’s review. There is no claim by plaintiff that there is a conflict in the departments which requires this court’s resolution on any legal issue; nor, does the outcome of this litigation present any statewide implications. Nor is any novel issue raised. This is simply a matter of an unsuccessful litigant seeking to avail herself of further appellate review.

15. Finally, it does not appear from the papers served on defendant-respondent that plaintiff has tendered to this Honorable court all the papers on which the Order of the Appellate Division, Second Department dated May 10, 2017 was based in derogation of Rule 500.22(c) of this court.

Procedural History as Relates to this Action

16. As indicated, this is a civil action commenced in the Supreme Court of the State of New York, County of Nassau whereby plaintiff-appellant *pro se*, Sororazam Bethune, alleges she sustained personal injuries on August 24, 2011 when she was a passenger on an N79 bus, allegedly consequent to the negligence of the bus operator who, according to plaintiff's complaint, "suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus". (¶8 of Plaintiff's Verified Complaint, a copy of which is annexed hereto as **Exhibit "2"** together with the Summons) Plaintiff claims that the movement of the bus caused her to lose her balance and, while she did not fall, she claims to have hit her left ankle on a chair. There was no contact between the bus and any other vehicle.

17. A copy of defendant's answer dated November 9, 2012 and served on plaintiff's original counsel of record, Law Offices of Kevin A. McCarthy, is annexed hereto as **Exhibit "3"** together with proof of service of defendant's answer on Mr. McCarthy's firm on November 13, 2012. Contemporaneous with its answer, defendant served omnibus discovery demands

on the plaintiff. See copy of certification listing said disclosure demands with the correlative affidavit of service reflecting that the documents were mailed to plaintiff's then counsel on November 13, 2012, annexed hereto as **Exhibit "4"**. Mr. McCarthy makes specific reference to the November 9, 2012 answer and demands (thereby acknowledging receipt) by his correspondence to defense counsel dated February 13, 2012, a copy of which is annexed hereto as **Exhibit "5"**.

18. In the pre-trial stages, defendant had moved for summary judgment. A copy of defendant's moving papers (without exhibits) is annexed hereto as **Exhibit "6"**. Such motion was denied by Order of Hon. Angela A. Iannacci dated July 6, 2015, a copy of which is annexed hereto as **Exhibit "7"**. The Iannacci Order is mentioned herein only to explain its context, since plaintiff quotes from that court's decision (e.g. Bethune Aff. 6/8/17, at p. 13). The Iannacci Order, however, has no relevance to the issues before this court as is the case with almost all of the exhibits appended to plaintiff's moving papers.

19. The liability portion of a bifurcated trial was conducted before the Hon. Thomas Feinman in the Supreme Court, Nassau County on November 5 and 6, 2015 which resulted in a defense verdict. A unanimous jury determined that defendant MTA Long Island Bus was not negligent. A copy of the relevant pages of the trial transcript wherein the unanimous defense verdict is announced are

annexed hereto collectively as **Exhibit “8”**.

20. Accordingly the matter did not proceed to a damages trial.¹ Rather, judgment was entered on April 22, 2016 in favor of the defendant MTA Long Island Bus dismissing plaintiff’s complaint. Annexed hereto as **Exhibit “9”** is a copy of the Judgment with Notice of Entry and proof of its service by mail on May 13, 2016 on both the plaintiff and on Stuart A. Jackson, Esq., the attorney who represented plaintiff during the liability trial.²

21. Plaintiff (who by that time was *pro se*) filed a Notice of Appeal to this court dated September 18, 2016, a copy of which is annexed hereto as **Exhibit “10”** (without exhibits). Such is untimely.

22. Plaintiff herein contends that her former attorney, Stuart A. Jackson, Esq. forgot to file a Notice of Appeal of the Judgment. (One of the branches of relief sought by plaintiff in the subject motion is vacatur of this court’s order dated May 10, 2017 based on plaintiff’s contention that her former attorney, Stuart A. Jackson, Esq., forgot to file an appeal.)

¹ Accordingly, plaintiff’s discourse as to her medical condition and the numerous records appended to her motion papers were not part of the liability trial conducted before Judge Feinman. As liability was determined in favor of the defendant a trial on damages was not necessary.

² Despite the volume of the moving papers, plaintiff omits the affidavit of service reflecting the service of the Judgment with Notice of Entry on plaintiff and her counsel which constitutes part of the record which was before the Appellate Division, Second Department in connection with the motion practice that resulted in the Appellate Division’s May 10, 2017 Order which plaintiff seeks to appeal.

23. By Notice of Motion dated March 6, 2017, defendant moved to dismiss plaintiff's appeal pursuant to CPLR §5513 by reason that it is time-barred. A copy of defendant's Notice of Motion dated March 6, 2017, and the supporting affirmation of Vanessa M. Corchia, Esq. dated March 6, 2017 (without exhibits) is annexed hereto as **Exhibit "11"**. A copy of the opposing Affidavit of plaintiff Sororazam Bethune sworn to on March 27, 2017 (without exhibits) is annexed hereto as **Exhibit "12"**. A copy of the Reply Affirmation of Vanessa M. Corchia, Esq. dated March 29, 2017 (without exhibits) is annexed hereto as **Exhibit "13"**.

24. This motion practice culminated in the unanimous Order of the Appellate Division, Second Department dated May 10, 2017 (Exhibit 1 herein) as to which plaintiff has sought this court's review. By its May 10, 2017 Order, the Appellate Division granted defendant's motion and dismissed plaintiff's appeal of the judgment by reason that it was time-barred pursuant to CPLR §5513(a).

25. Plaintiff concedes to this court that no timely appeal was taken of the April 22, 2016 judgment. This court is not imbued with the power to correct an error by a litigant or litigant's counsel in failing to timely serve and file a Notice of Appeal as is the circumstance in the case *sub judice*.³

26. Plaintiff is apparently dissatisfied with her discharged

³ We take no position as to who, as between plaintiff and her counsel, had failed to file a Notice of Appeal of the Judgment entered on April 22, 2016.

counsel. However, this is not a proper forum for such grievances.

27. There is no dispute that no *timely* Notice of Appeal was filed in the Supreme Court, Nassau County with regard to the Judgment entered on April 22, 2016.

28. The Appellate Division correctly applied the relevant statute, CPLR §5513(a) which provides a mandatory time frame for a party to take an appeal as follows: “An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry....”

29. On May 13, 2016, both plaintiff and plaintiff’s then counsel were served with Notice of Entry of the Judgment (Exhibit herein).

30. Inarguably, CPLR §5513(a) provides a deadline to file a Notice of Appeal for no later than 30 days after service with Notice of Entry, and where, as in this case, service was made by regular mail, an additional five (5) days is added pursuant to CPLR §5513(d) and CPLR Rule 2103, making the deadline 35 days. Thus, the 35 days from May 13, 2016 in which plaintiff had to file a Notice of Appeal of the Judgment expired on June 17, 2016, three months prior to September 18, 2016, the date of plaintiff’s Notice of Appeal (Exhibit 10 herein). None of this is disputed. Dismissal of plaintiff’s appeal was therefore warranted under controlling law.

31. This mandatory statutory timeframe (that is 30 days, plus an additional five days for mailing) is to be strictly enforced. See, e.g. Ashton v. Morris M. Goldberg, P.C., 201 A.D.2d 602, 612 N.Y.S.2d 866 (2nd Dept. 1994); Aetna Casualty & Surety Co., v. D’Elia, 149 A.D.2d 587, 540 N.Y.S.2d 679 (2nd Dept. 1989); Bernstein v. Board of Appeals, 31 A.D.2d 650, 297 N.Y.S.2d 702 (2nd Dept. 1968);

32. Plaintiff’s *pro se* status does not relieve her of the obligation for timely filing a Notice of Appeal. Pravda v. N.Y. State DMV, 286 A.D.2d 838, 730 N.Y.S.2d 746 (3rd Dept. 2001).

33. Further, this court has categorically held that “[t]he power of an appellate court to review a judgment is subject to an appeal being timely taken. Hecht v. City of New York, 60 N.Y.2d 57, 61, 677 N.Y.S.2d 187, 189, 454 N.E.2d 527 (1983). See also, Ocean Accident & Guarantee Corp. v. Otis Elevator Co., 291 N.Y. 254, 52 N.E.2d 421 (1943); Malik Coughlin, 127 A.D.2d 948, 512 N.Y.S.2d 548 (3rd Dept. 1987) . Indeed, because it is a jurisdictional defect, a motion to dismiss an appeal can be raised at any time, even at oral argument of an appeal! Roy v. National Grange Mut. Ins. Co., 85 A.D.2d 832, 446 N.Y.S.2d 423 (3rd Dept. 1981). Thus, the failure of plaintiff to have timely served/filed a Notice of Appeal of the Judgment in the office of the Nassau County Clerk is a fatal jurisdictional defect.

34. Therefore, by reason that plaintiff's Notice of Appeal dated September 18, 2016 was untimely by some three months, plaintiff's Notice of Appeal dated September 18, 2016 was correctly dismissed by the Appellate Division, Second Department as that court was without authority to entertain such untimely appeal.

35. Notably, a jurisdictional defect cannot be overcome by plaintiff's contention that the failure to have timely filed a Notice of Appeal of the judgment lies with her former attorney, Mr. Stuart A. Jackson, Esq. To the extent plaintiff has any dispute with her former attorney as to the handling of her case, this is not the forum to address such matters.

36. Accordingly, plaintiff's Notice of Appeal dated September 18, 2016 (Exhibit 10 herein) was untimely, and since dismissal of such appeal was mandated by application of CPLR §5513(a) and the jurisdictional constraints of the appellate court and dismissal was therefore properly granted.

37. There is no question of law for this court's review.

38. Moreover, in seeking leave to appeal to this court plaintiff fails to address the *certiori* factors set forth in §500.22(b)(4) of the rules of this court and does not articulate any persuasive basis for this court's review. There is no claim by plaintiff that there is a conflict in the departments which requires this court's resolution on any legal issue; nor, does the outcome of this litigation present any

statewide implications. Nor is any novel issue raised. This is simply a matter of an unsuccessful litigant seeking to avail herself of further appellate review for her perceived, but wholly unsubstantiated wrongs.

39. Therefore, plaintiff's motion to this court must be denied.

**THIS COURT SHOULD DENY PLAINTIFF'S
APPLICATION TO PROCEED AS A "POOR
PERSON" IN THIS COURT**

40. Denial of plaintiff's motion for leave to appeal from the May 10, 2017 Order of the Appellate Division, Second Department will render plaintiff's concomitant application to proceed as a poor person in this court moot.

41. Nevertheless we oppose such relief due to the insufficiency of plaintiff's proof that she is entitled to poor person status. Moreover, we are compelled to bring to the attention to this court the proliferation of litigation by plaintiff which has been shown to lack merit, as lack of merit should weigh in favor of declination of the exercise of this court's jurisdiction.

42. Plaintiff's papers seeking poor person status contain no itemization as to her actual expenses, although from what she says, we do know that apparently she pays for a car, for car insurance, and therefore necessarily for the incidentals that go with owning same including gas and maintenance, which can be considered a "want" rather than a "need".

43. Plaintiff also apparently finds the funds to travel to Iran to

obtain her yearly stipend from her inheritance.

44. While plaintiff acknowledges receipt of social security she provides documentation as to her 2015 monthly benefit. No documents are furnished as to benefits in 2017. Plaintiff also does not state whether she receives any income/assistance from the Department of Social Services, nor whether she has applied for such intervention.

45. Moreover, plaintiff indicates that her daughter lives with her and that her daughter's monthly income is \$900.00. There is no representation as to whether her daughter assists her in the common household expenses as one would expect.

46. By plaintiff's own documentation, it appears that plaintiff was funded the sum of \$380,000 against potential recovery from her lawsuits by a company Mayfield Settlement Funding and received these funds over the short span of a two year period from October 2014 to December 2016 which apparently plaintiff has already spent, based on her assertions to this court.

47. No credible explanation has been given as to an expenditure of so large a sum in such a short expanse.

48. By plaintiff making reference to what she "owe[s]" Mayfield Settlement Funding, such is suggestive that plaintiff is actually required to reimburse Mayfield regardless of the outcome of her litigation. However, a

document plaintiff submitted on connection with one of her other litigation matters entitled Mayfield Settlement Funding Security Agreement and Transfer of Proceeds (a copy of which is annexed hereto as **Exhibit “14”**) contains this provision: “The repayment of this financial commitment *is contingent upon an award or settlement*” of one of plaintiff’s litigation matters. From this it appears that repayment is *only* required in event of recovery.⁴

49. Unfortunately, plaintiff is no stranger to the litigation system. Indeed the case *sub judice* is the later of two cases plaintiff brought against MTA Long Island Bus. The earlier case involved an alleged April 11, 2011 “accident.” That action commenced under Nassau County Index Number 4148/2012 was thereafter dismissed by Order of Hon. John M. Galasso entered March 14, 2014, which dismissal was then unanimously affirmed by the Order of the Appellate Division, Second Department dated April 27, 2016 (a copy of which is annexed hereto as **Exhibit “15”**). This court denied leave to appeal per its September 8, 2016 Order (a copy of which is annexed here to as **Exhibit “16”**).

50. Plaintiff’s moving papers also contain a litany of allegations with regard to injuries she supposedly sustained at the hands of a “Dr. Monhian” per paragraph 5 of the moving affirmation of plaintiff sworn to on June 8, 2017 relating to her application for poor person relief. In this regard plaintiff had commenced a

⁴ If there are any other documents relating to plaintiff’s agreement with Mayfield that contain any contrary provisions, we are not privy to same.

medical malpractice action in the Supreme Court, Nassau County against Dr. Nathan Monhian and subsequently the defendant, Dr. Monhian was granted summary judgment and plaintiff's complaint dismissed per the Order of Hon. Denise L. Sher entered on October 19, 2015, which is currently under appeal.

51. It is therefore respectfully submitted that plaintiff be denied leave to proceed as a "poor person" in this court.

THERE IS NO ENTITLEMENT FOR A LITIGANT IN A CIVIL PERSONAL INJURY ACTION TO BE APPOINTED COUNSEL TO PROSECUTE AN APPEAL, AND PLAINTIFF'S REQUEST MUST THEREFORE BE DENIED

52. As this is a tort based civil personal injury action, plaintiff-appellant is not entitled to court appointed appellate counsel. The only type of cases where an indigent individual is entitled to court appointed counsel is during a criminal case or certain family court matters pursuant to Judiciary Law §35(8) and Family Court Act §262.

53. Inarguably, this tort based personal injury action does not fit into either category. Even assuming *arguendo*, plaintiff was afforded "poor person status" this does not mean she would be entitled to appointment of counsel in this court. The two are not coextensive. Rather "poor person" relief would be confined to this court waiving certain fees. On the other hand, appointment of counsel is confined to situations involving a deprivation of liberty or forfeiture.

54. The laws of this state do not guarantee a right to counsel in

the context of a plaintiff's tort-based personal injury action.

55. Indeed, this court has held that “[t]he Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment converge to require that indigent criminal defendants, faced with the ‘risk of loss of liberty or grievous forfeiture’ (quoting Matter of Smiley, 36 N.Y.2d 433, 437, 330 N.E.2d 53, 369 N.Y.S.2d 87 [1975]) are granted ‘equal rights to appeal through the representation and advocacy of assigned counsel.’” Matter of Giovanni S. v. Jasmin A., 89 A.D.3d 252, 254, 931 N.Y.S.2d 676, (2d Dep’t. 2011) (quoting People v. Stokes, 95 N.Y.2d 633, 635-636, 744 N.E.2d 1153, 722 N.Y.S.2d 217 [2001]).

56. This is a personal injury action where appellant is not at risk for losing her liberty or at risk of forfeiture. As such, respondent requests that that part of appellant’s improper motion for the appointment of appellate counsel be denied.

GENERAL OBJECTIONS TO PLAINTIFF’S MISUSE OF COURT PROCEEDINGS

57. We are constrained to make further comment.

58. While we understand that a *pro se* litigant’s papers may not be held to the same standard as those of a member of the bar, nevertheless, we have seen in far too many of plaintiff’s submissions in this case, and in her other court matters containing liberal use of criticisms, accusations, and the use of derogatory language impugning Judge Feinman, various counsel in the office of the

undersigned, and her own (former) attorney.

59. While the target of plaintiff in her moving affidavit appears *this time* to primarily be her own former counsel (who is not a participant herein in a position to state the contrary) that he forgot to file a notice of appeal, plaintiff falsely contended to the appellate division and now this court that the defendant had never answered the complaint and only created the answer to plaintiff's complaint in March 2017 to include as an exhibit in the motion to dismiss the appeal!

60. This is fiction and a blatant falsehood and fabrication that cannot stand unchecked. A copy of my Affirmation in Opposition to plaintiff's pending motion in the Appellate Division, Second Department for a default judgment against defendant (despite that defendant provided at trial) is annexed here to as **Exhibit "17"**. We find it necessary to alert the court of this pattern of conduct and request that plaintiff be cautioned.

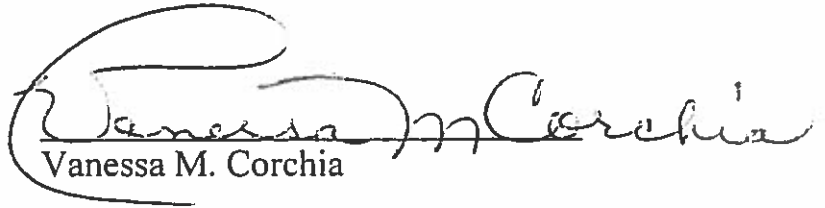
61. Additionally, most of plaintiff's statements to this court are *dehors* the record and clearly outside the scope of the narrow issue raised to this court, that is, the propriety of the Order of the Appellate Division, Second Department dated May 10, 2017. Inarguably, plaintiff's notice of appeal was three months late and dismissal of the appeal therefore warranted.

62. For all the reasons set forth above, plaintiff's motion must be

denied in all respects.

WHEREFORE, it is respectfully requested that this Honorable Court deny plaintiff's motion in its entirety and grant any other such and other further relief as this court may deem just and proper in the premises.

Dated: New York, New York
June 23, 2017



Vanessa M. Corchia

RESP. APP 20

State of New York

Court of Appeals

*Decided and Entered on the
twelfth day of September, 2017*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2017-679

Sororazam Bethune,
Appellant,

v.

MTA/Long Island Bus, et al.,
Respondents.

Appellant having appealed and moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court



*State of New York
Court of Appeals*

*John P. Asiello
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

Decided September 12, 2017

Mo. No. 2017-679

Sororazam Bethune,
Appellant,

v.

MTA/Long Island Bus, et al.,
Respondents.

On the Court's own motion, appeal dismissed, without costs,
upon the ground that no substantial constitutional question is
directly involved.

Motion for leave to appeal denied.

Motion for poor person relief dismissed as academic.

RESP. APP 21

**MILFORD SUPERIOR COURT - J. D. OF ANSONIA / MILFORD
MILFORD HOUSING SESSION**

SHELTON PROPERTIES, LLC ,

PLAINTIFF, DOCKET NO. AAN-CV17-6022078

V. JUNE 30, 2017

**SORORAZAM BETHUNE, Reply Aff. in Opposition to
Plaintiff's Opposition to Opening
Judgment and Vacating Eviction**
DEFENDANT.

**State of Connecticut) ss:
County of Fairfield)**

J.D. CLERK'S OFFICE
SUPERIOR COURT
MILFORD, CT

2017 JUN 30 PM 2:46

I, Sororazam Bethune, the defendant in the above action hereby state the following in Opposition to Plaintiff's Motion dated June 29, 2017 in Opposition to my Motion to Open Judgment:

1. I stated on first page of my motion the reason for requesting to open the Judgment as:

"During Stipulation my choices were to either sign the Stipulation; or Trial same date and Eviction within Five days. Landlord charged me 2 months security, and that due to Disability I was supposed to be charged one month security."

Attorney said my birthday was Feb. 4th, that I moved into Apt. on Feb. 2nd, that I was 61 and not 62; that disability did not apply to 1 month security L/T Law.

[Handwritten signature]

2. I stated several times to the Housing representative and the Attorney for Landlord that I was having chest pains and was not able to have a Trial. I asked them to schedule trial in two or three weeks. The attorney for Landlord said instantly that it was not possible, that we would have a trial within half hour same day, and the Sheriff will be given five (5) days to evict me and my daughter from the Apt.
3. I asked if Landlord could give me my 2 months security back and few weeks to find an apt. and move out; I offered that Landlord could place a Lien against my law suit in New York State for the Permanent injuries caused by MTA Long Island Bus. The Attorney immediately rejected and said he was going to sue me for the unpaid rent and he didn't want to waive future law suits. Accordingly, he advised the Housing Representative to state the same in the Stipulation, that both parties would not Waive future any actions against each other. They added that as well to the Stipulation. I asked them how I was supposed to look for an Apt. without any available funds. The Attorney said he wanted me out by the end of June.
4. I was not consenting telling them that's not fair, I have medical conditions, my daughter in Hospital, you are not helping me resolve this, I will not be able to find an Apt. without having funds to pay Security and 1st month rent; and that I didn't want to have a trial that day, I was having severe chest pains and heaviness having difficulty breathing.

5. The only option was to sign stipulation or face trial, eviction within five days. I signed the Stipulation based on:

- (a)** The landlord would not consent to my request for a trial in two or three weeks since I was having chest pains and requested Trial in few weeks. The Attorney for the landlord said we were going to have a trial in half hour and the result would be eviction within five days.
- (b)** Alternatively, I asked the attorney for Landlord to give me back my two months security to be able to move out before June 18, 2017. I offered to sign an agreement that I would pay the unpaid rent and any future rent with interest to landlord at any point I had funds available; and/or they could additionally place a lien against my law suit in New York State to be paid with interest when my injury case resolved; but attorney for landlord did not agree. The options were signing Stipulation; or same day trial eviction within 5 days.
- (c)** I signed the Stipulation under stress while having chest pains on May 17, 2017, due to the fact that they did not give me any other options. I told them I wanted trial in few weeks due to not feeling well having severe chest pains. They did not agree. They took my 2 months security of \$4,540.00; I asked them to let me stay for 2 months, they did not agree.

(d) I discussed two illegal entries with the Attorney for landlord on February 12, 2017 and on March 17, 2017. Also, the fact that Apt. bathrooms on Feb. 2nd when I moved in, were not clean. That probably, highly likely, Victor, Super; and/or other workers had been using the Bathrooms in my apt. for few weeks. I called Management asked them to send someone immediately to clean it, they did not send anyone, they could not find Victor on Feb 2, 2017 to clean the bathrooms. I had to clean them myself. It felt horrible and awful that Landlord having Unprofessional staff and Super using tenants' apartments and not cleaning them up before they move in. On Feb. 3, 2017, Victor, approached me giving me cleaning spray and a brush telling me to clean the bathroom. I told him it was their responsibility to give me clean apartment, that I had to clean it myself.

6. FEB. 12, 2017: ILLEGAL APT. ENTRY BY LANDLORD
LANDLORD'S EMPLOYEES VIOLATING MY RIGHTS:

When I got back to Apt., approximately 8:15; all 3 hallway lights were off. They were on when I left the Apt., I double checked as I do every time I leave the Apt., they were all on. Someone, either Victor, or Manager (they both have keys to Apartments); or Landlord himself entered my Apt. I didn't understand why they would enter my apt. without my consent.

7. **FEB. 12, 2017;** repeated slamming late at night and early next morning. **FEB. 13:** Early morning high impact sounds; **MARCH 14:** High impact sounds without any snow on the ground. **MARCH 15, 2017:** snow plower blocking my way out of parking lot, not letting me leave the parking lot. I decided to leave after approx. 10 minutes. He scared me by getting too close to my car back and forth as if he was going to hit my car. Other Incidents of excessive daily high impact noise by workers; workers blocking my way with two huge trucks not letting me park in handicap space.

8. **MARCH 17, 2017:ILLEGAL ENTRY BY LANDLORD**

LANDLORD'S EMPLOYEES, VIOLATING MY RIGHTS:

I got back to Apt. from New York, approximately 11:50pm, my Apt. door was unlocked, both locks had been unlocked, and there was a notice by Marshal to Quit half way inside half way out. I called 911, a police officer came and I reported it.

Exh. No. 1: Police Rpt: 17-6853 – 03/17/2017; Apt. Illegal Entry.

9. In addition to prior two illegal violations by Landlord on Feb. 12, 2017 and March 17, 2017; Landlord's Staff, employees, Entering my Apt. again Illegally entered my Apt. again. The only employees who have keys to all apartments are Victor, Super, and the manager, Narineh Hakopians.

10. JUNE 9, 2017: ILLEGAL APT. ENTRY: LANDLORD

LANDLORD'S EMPLOYEES, VIOLATING MY RIGHTS:

When I got back home in the evening, I saw noticed several insects crawling on the Kitchen Floor for the first time since I moved in on Feb. 2, 2017. I knew It was highly likely Victor, Super, he has keys to tenants' apartments, viciously illegally entering my Apt. I had to clean the entire apt. floors and carpeting areas, vacuuming and mobbing the floors, I was very angry and upset, I ended up having extreme anxiety.

11. JUNE 2, 2017: ILLEGAL APT ENTRY: LANDLORD

LANDLORD'S EMPLOYEES, VIOLATING MY RIGHTS:

I was out most of the day, when I came back, as soon as I opened the Apt. door, a huge nasty bug hit my face, I panicked tried to hit it but I fell and the bug jumped all the way to the ceiling. There are no bugs like that in hallways, or even in the Lobby. I was crying looking at it for several minutes, it was not flying but it was still alive, I took a picture and started spraying Lysol towards the ceiling where the bug was. I sprayed and it was still there not moving. I called 911 asked them to come and remove the bug up there close to the ceiling, the police officer said they will not send an officer to remove a bug, that I had to remove it myself. After that I noticed the bug was no longer on the ceiling it was gone probably due to Lysol

spraying, flew elsewhere. I started spraying Lysol throughout the apt. everywhere in the corners, in kitchen, bedroom bathroom, to kill the bug, I was having hard time sleeping since I didn't know where it was, and if it was going to fly around again. A few days ago I was cleaning the Apt. and found the bug behind my computer desk and removed it.

Exh. No. 2 :Picture of Bug on June 12, 2017 close to Ceiling.

12. APRIL 10, 2017: when I entered parking lot, Victor had parked on the Crossed Lines next to the handicap space I park in, front of the building, as too many other times, to harass me. I asked him why he was parking on crossed lines next to handicap space which is area for medical emergency purposes for handicap. He yelled said that it was also loading and unloading zone. But, there was no loading and unloading going on by moving companies, or any other cars that day and many other times when I saw he had parked on crossed lines next to handicap space where I park. But there was no Loading and Unloading in front of the building within the next hour when I waited for police, during which time Victor left. When Police came, the manager came and said Victor was busy and she was there to speak for him. I wanted police officer to talk to Victor and tell him to stay away from me and to stop aggravating me, but Victor never showed up.

Exh. No. 3: April 10, 2017 Picture; Police Report: 17-9559.

- I. June 14, 2017:** I was taken to Yale New Haven Hospital Emergency Room due to severe chest pains and difficulty breathing. At Yale New Haven, CT of Chest was performed. Next day, on June 15, 2017 a doctor told me that my Lungs had inflammation causing severe chest pains due to Oxygen not passing through lungs.
- II. Pursuant to Conn. Gen. Stat. § 47a-23c- If a tenant is 62 years or older or disabled and lives in a building of five or more units, then the landlord must have good Cause to evict. Permissible reasons are found at Conn. Gen. Stat. § 47a-23c(b)(1): Requesting to Vacate Stipulation and Judgment, allowing Lease Term Stay for Remaining Lease Period by Court Order, Due to Def.'s Life Threatening Conditions and Chest-CT Diagnosis on (June 19, 2017); and Heart Echocardiogram Diagnosis.**
- III. The following is CT-Chest & Echocardiogram on June June 18, 2017 and June 19, 2017, at St. Francis Hospital, Roslyn, New York:**

TRANSTHORACIC ECHOCARDIOGRAM – JUNE 19, 2017:

“TRACE MITRAL Regurgitation.”

“MILD (1+) TRICUSPID Regurgitation.”

“Evidence of Borderline PULMONARY Hypertension.”

CT ANGIO CHEST W/NO CONTRAST – JUNE 19, 2017:

“ATELECTASIS at the Lung Bases.”

Exh. No. 4: 06/19/2017: CT Chest w/wo Contrast; Echocardiogram.

IV. June 18, 2017: I was having severe chest pains and heaviness again for several hours, I went to St. Francis Hospital they kept me one night for observation and further Echocardiogram the next day. I've been told that these are severe risky conditions, and they are life threatening. I have to see a Heart Surgeon and discuss surgery options for my Heart, and if possible Lung as well during same surgery, if that could be done under one surgery only and not two. It is impossible for me to move out right now due to having symptoms on and off every day, not having any funds right now to find an apt., and not physically and emotionally able to move out, I cannot handle it. Also, my daughter likes her room, she was discharged from Yale New Haven on June 20, 2017. Based on her mental health condition, it will be detrimental for her to move. Also, my recent medical findings of life threatening heart and lung diagnosis, requiring surgery. The Landlord is not in an emergency situation and he is financially secured. A conscionable landlord could and would wait for his rent plus interest, by Court Order for future payments at any point I have funds from my injury law suit in New York.

I will agree to an Order by this Court, agreeing to pay any past and future rent payments owed to Landlord plus interest, as soon as I have funds available from my injury law suit in New York, to pay landlord all Past and Future owed rent plus interest.

V. I respectfully request this court to allow us stay at the Apt. per Lease Term, until January 31, 2018, due to my life threatening medical conditions based on June 19, 2017 diagnosis of Heart and Chest/Lungs, and based on prior brain, spine and left knee conditions stated in my "Answer", by a Court Order by this Court, to vacate Stipulation and Eviction, and allowing us to stay at Apt. for Lease Term. Accordingly, Ordering total Past Rent Payments Owed with interest; and total future Rent payments owed plus interest; to be paid at any point I have funds available from my injury law suit in New York, with any other relief this Court may decide just and proper.

Dated: June 30, 2017
Shelton, Connecticut

By: _____


Sororazam Bethune, Pro Se
Cell No.: 516-965-1146
7 Acadia Lane, Apt. 6401
Shelton, CT 06484

sororazamb@gmail.com

Sworn to before me

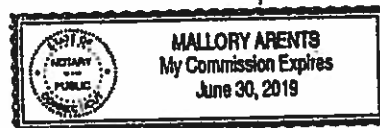
Mallory Arents
6/30/2017

(MUA)

This 30 date of 6, 2017

Mallory Arents

NOTARY PUBLIC



TO: Attorneys for Landlord by E-Mail: info@landlordlawfirm.com
Robert W. Chesson, Esq.
G. Adam Schweickert, Esq.
Jefrey M. Mastrianni, Esq.
Chesson & Schweickert, LLC
215 Broad Street
Milford, CT 06460

RESP. APP 22

MOTION TO OPEN JUDGMENT
(SMALL CLAIMS AND
HOUSING MATTERS)
JD-CV-51 Rev. 5-15
C.G.S. §§ 52-212, 52-212a, 52-259
Pr.Bk. §§ 17-4, 17-43, 24-31

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

State of Connecticut
Post Date: 07/20/2017
Payfile: 1720151-1



Docket: CV1760229785
Receipt Hbr: 0512493
Amount: \$0.00

Court Use Only
GW

List Total: 001 \$0.00

NOTICE: This motion must be filed with the correct fee required by section 52-259c(a) of the Connecticut General Statutes.

(Name and address of plaintiff or plaintiff's attorney)

Shelton Properties, LLC
Plaintiff
Robert W. Chesson, Esq.

(Name and address of defendant or defendant's attorney)

Sororazam Bethune
Defendant

CV176022978

ADA NOTICE

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.

☐ Judicial District	☒ Housing Session	☐ Geographical Area Number	☐ Small Claims Area	Address of Court (Number, street, town, and zip code) 106 Elizabeth St., Derby, CT
Name of case (Plaintiff vs. Defendant)				

Motion To Open Judgment

I request that the judgment in the case named above be opened because:

See attached

FILED
SUPERIOR COURT
JUDICIAL DISTRICT OF ANSONIA/MILFORD

JUL 19 2017

NOTE: If this is a motion to open a judgment entered because of a default or nonsuit, the motion must be sworn to by the person filing this motion or that person's attorney.

Signed (Plaintiff/Defendant or Attorney) [Signature] Defendant	Date signed July 17, 2017
Subscribed and sworn to before me on (Date) 7/17/17	Signed (Clerk, Comm. of Superior Court, Notary Public) See NOTE above [Signature] LORISEMRAJ NOTARY PUBLIC *NOTARY EXPIRES AUG 31, 2018

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on (date) 7/17/2017 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Name and address of each party and attorney that copy was mailed or delivered to:
Amy Chesson

*If necessary, attach additional sheet or sheets with the name and address which the copy was mailed or delivered to.

Signed (Signature of filer) [Signature] Defendant	Print or type name of person signing SORORAZAM BETHUNE	Date signed JUL 17 2017
Mailing address (Number, street, town, state and zip code) 7 Acadia Lane, Building #6, APT. #401, Shelton, CT 06484		Telephone number

Notice Of Court Hearing

A court hearing on this case has been scheduled. All parties must come to the hearing at the address and time indicated below. If you cannot come to the hearing, you should let the other party know and get an agreement before you notify the court that you cannot come to the hearing. (If you have any witnesses, please let them know about this court hearing so that they can be in court with you. Bring all other evidence you want to show the court, such as bills, receipts, invoices, etc. If this motion is granted, a trial on the case may start the same day.)

Place of hearing (If different from Address of Court above)	Date of hearing	Time ____.m.	Courtroom
		Date	

Clerk of Court, by

Order (For Court Use Only)

This motion to open judgment is ordered:

☐ Granted ☐ Denied, which means that the judgment/decreed in the case named above is still in effect.

By the Court (Name of Judge/Magistrate) _____, M. _____, J.	Signed (Assistant Clerk) _____ _____ _____	Date signed ____/____/____
---	---	-------------------------------

MOTION TO OPEN JUDGMENT

*original
20 pgs.*

**MILFORD SUPERIOR COURT – STATE OF CONNECTICUT
Judicial District of Ansonia / Milford Housing Session**

**SHELTON PROPERTIES, LLC ,
PLAINTIFF,**

V.

DEFENDANT.

**DOCKET NO. AAN-CV17-6022078
Sororazam Bethune Affidavit dated
July 16, 2017, Opposing 07/06/2017
Order Resulting from Mis-conduct,
Mis-Representation of Facts by
Robert W. Chesson, Slandering me in
Order to get Judgment for his client.**

Motion To Obtain Judgment

**State of Connecticut) ss:
County of Fairfield)**

I, Sororazam Bethune, Tenant, hereby state the following in Opposition to Judgment / Order decided on July 5, 2017 by Hon. Justice Arthur A. Hiller; caused by Robert W. Chesson, Esq. slandering me, I state the following:

POINT: I

- 1. Robert W. Chesson, Esq., made false medical statement regarding June 19, 2017 Heart/Lung Diagnosis, St. Francis Hospital, NY, for severe Chest Pains, Difficulty Breathing.**

He ignored my Spine and Left Knee injuries / surgeries in 2012; Heart PFO & ASA conditions diagnosed in 2015; Brain TIA/ Stroke in 2015 [Exh. 1 to Answer]; he made false medical statement about my June 19, 2017 Chest CT Angio & Heart-Echo finding of 2 Heart Valves: Mitral and Tricuspid not working, throwing blood Backwards, causing insufficient blood to organs; Lung Atelectasis; he told Hon. Judge Hiller:

**"I probably have TRACE MITRAL Regurgitation;
I don't even know I have it, not Life Threatening."**

EXH. A: June 19, 2017 Echocardiogram of Heart, CTScn / Chest at St. Francis Hospital; for severe Chest Pains & Difficulty Breathing.

*(ad 2015
Heart Echo
diagnosis of*

POINT: II

- 2. Robert W. Chesson, Esq. Insulted me disrespectfully by manipulating making add'l false statement committing misconduct to get a Judgment. I have never been arrested; No Criminal History. He Degraded, Denigrated, Disparaged, Slandered me to get a judgment for his client.**

After Hon. Justice Arthur A. Hiller read the Notes and Utility statements by my Dr., Robert W. Chesson, Esq. manipulated, made another False statement to Court regarding My Dr.'s Note and Utility Form. My Dr.'s statements to Court & Utility Co. indicated Life Threatening Conditions; asking the Court to Vacate Eviction. Robert W. Chesson, Esq., Not being a Doctor, he Slandered me by laughing and making another false statement against my Dr.'s Statement, he told Hon. Justice Arthur Hiller:

"Not life threatening, she is just trying to get money."

EXH. B: My Dr.'s Note asking Court to Vacate the Eviction due to my Life Threatening Conditions; stating same on UI Elec. Co. Form.

POINT: III

- 3. Robert W. Chesson, Esq., further committed Perjury, Misconduct, Mis-representation of facts by making the following False statement to Hon. Justice Arthur A. Hiller.**

"I don't want to do what I am about to do. I evicted her from her previous landlord; was evicted previously by me and now being evicted again".

I instantly objected. But Justice Hiller got angry yelled at me to be Quiet and to Sit Down. I sat down, I was shut down, knowing that he manipulated, committed perjury in order to get an eviction judgment.

POINT: IV

- 4. I was not evicted from my previous Apartment, 101 Park Place Corp., and or by their attorney, Robert W. Chesson. The Action was withdrawn by Landlord. Robert Chesson Committed Perjury, he Misrepresented facts. 101 Park Pl., Returned my Security Deposit (\$3,487.00); we signed a Release drafted by their attorney. Action was withdrawn.**

I was having problems with excessive noise from next Hi Rise Building being built and constant slamming, drilling, construction work every day. I was looking for a quiet Env. Apt. I had an attorney representing me. Robert W. Chesson, had filed papers with Milford Housing. The Action was withdrawn since the Landlord, 101 Park Place, returned my Security Deposit back asking me to sign a mutual Release. I signed and I moved from Stamford on February 2, 2017 to Shelton.

POINT: V

- 5. Robert Chesson Violated the Release Confidentiality Provision, stated In Release Par. 4; Pg. 1 - 2, by:**

(A): Disclosing Eviction Process to Justice Hiller to get a judgment for his client, (he started Eviction, but Action was withdrawn); which information was confidential, Not to be disclosed to a Third Party; &

(B): He did not evict me. He told Court he Evicted me, he Committed Perjury, Mis-represented facts; Robert W. Chesson, Esq. told Court / Justice Hiller:

"I don't want to do what I am about to do. I evicted her from her previous landlord; she was evicted by me, and now being evicted again".

POINT VI.

The Mutual General Release Robert W. Chesson, Esq. drafted for his Client: 101 PARK PLACE CORP. AND GREYSTAR RS NE, LLC F/K/A RIVERSTONE RESIDENTIAL NE, LLC., "RELEASOR"; which was signed by his client and myself, Sororazam Bethune, "RELEASEE", states the following CONFIDENTIALITY PROVISION BETWEEN BOTH PARTIES, on Par. 4; Pg.: 1- 2 ; states: "Neither Party shall make or communicate to any person or entity any comments or statements (written or oral) that intentionally seek to denigrate or disparage or detrimental to reputation....":

General Mutual Release: Par. 4; Pg. 1 & 2:

....."The Releasor and the Releasee agree that the terms of this Release Agreement are and will remain confidential, and the parties may only make such limited disclosure of matters respecting this action as they or their representatives reasonably deem to be required by SUBPOENA or COURT ORDER or as appropriate to comply with rules, regulations and requirements of Government Agencies, State and Federal Courts, or a party's financial auditors, tax advisors or insurers or counsel. Neither Party shall (orally or in writing) disclose or make any other statements, or otherwise communicate the existence of this Release Agreement or the subject matter hereof without the prior written approval of the other Party. Neither party shall make or communicate to any person or entity any comments or statements (written or oral) that intentionally seek to Denigrate or Disparage, or are Detrimental to the Reputation or stature of the other party or its businesses, or any of its employees, directors and officers, investors and other associated third parties.".....

EXHIBIT C: Mutual Release signed by Landlord & Tenant.

CONCLUSION:

Robert W. Chesson, engaged in Mis-conduct, Mis-representation of facts, committed perjury to get a Judgment for his client, convincing the Court by denigrating, disparaging and slandering me, which is wrong, illegal, not fair. I have never been arrested. I have no criminal history. It is unconscionable of him to denigrate, disparage, and slander me, in order to get a judgment for his client. I have life threatening medical conditions and have been told by my Cardiologist that recent Heart tests indicate I may have blockage(s) in my Heart arteries. I have to take Artery Tests, Angiogram to determine where blockage(s) are, to remove / replace them. She said blood is not getting to all parts in my Heart; that something is wrong in Heart's lower left side above apex; causing insufficient blood to organs resulting in severe chest pains, difficulty breathing; and if not treated, will cause Heart Failure.

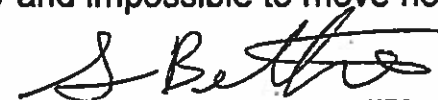
Landlord can place Lien against my New York lawsuit for owed and future rent + interest. I have paid for Feb., March, April. I owe three (3) months rent not Five (5) months (stated in Court). Robert Chesson took my two Month Sec. of \$4,540. for March, April Rent. I owe May, June, July rent.

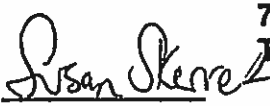
EXH. D: Rent Payment for Feb.; and March, April Rents (2M Sec. Dep.).

I respectfully request this court to Vacate Eviction. I have life threatening conditions due to which it is deadly and impossible to move now.

Dated: July 16, 2017
Shelton, CT

By:


Sororazam Bethune, Pro Se
7 Acadia Ln, Apt. 6401, Shelton, CT 06484
Tel: 516-965-1146 - sororazamb@gmail.com

Sworn to before me 
This 16th day of July, 2017


NOTARY PUBLIC



TO: Robert W. Chesson, Esq. by E-Mail: info@landlordlawfirm.com
Chesson & Schweickert, LLC

RESP. APP 23

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C......
SORORAZM BETHUNE,
Plaintiff,Index No. 4148/12
Sequence # 003
Part 37

- against -

MTA LONG ISLAND BUS,
Defendant,

01/31/14

.....
Notice of Motion (Vol. 1-3)..... 1-3

Upon the foregoing papers, defendant MTA Long Island Bus's motion for summary judgment pursuant to CPLR 3212 on the question of liability is granted.

This action for damages is based on plaintiff's claims to have suffered a serious injury when the bus in which she was a passenger suddenly left the bus stop after her boarding and while she was walking to find a seat the bus braked. This caused her left foot to make contact with the metal undercarriage of a passenger seat.

Plaintiff asserts although the bus did not come to a complete stop as a result of the braking nor did she fall, the contact with her left foot aggravated a cyst condition in her spine.

According to plaintiff's testimony at a public authorities hearing, there were no other passengers on the bus. She was facing the back of the bus when the driver applied the brakes. Plaintiff admitted she could not see what was in front of the driver at the precise time. Plaintiff stated she screamed at the bus operator after the incident.

The driver of the N23 route bus on the date and time of the incident, April 11, 2011 at about 2:55 p.m., was identified by defendant MTA Long Island Bus as Iling Wong. When Mr. Wong testified, he stated that no passengers on his bus, route N23, complained of an accident or injury that day and he has no knowledge of an incident such as the one described by plaintiff.

At her deposition, plaintiff described the driver as a thin, white male with black and white hair. She maintains she saw the same driver on the way home. In addition, plaintiff asserts that the bus on route N23 was numbered 1813.

The undersigned determines in the first instance that defendant has set forth sufficient evidence of its entitlement to judgment as a matter of law.

In opposition to defendant's motion, plaintiff contests that Mr. Wong was the driver and argues that his mere denial is not enough to dismiss the action.

BETHUNE v. MTA LONG ISLAND BUS

Index No. 4148/14

-2

While that argument may be accurate under certain circumstances, the Court must still evaluate plaintiff's testimony in order to consider if she has raised a material, genuine question of fact of defendant's negligence.

PJI 2:161 defines the duty of a common carrier, such as a bus, toward a passenger is to use reasonable care for their safety. Reasonable care means that care which a reasonably prudent driver would use under the same circumstances.

In the case at bar there was no accident. Indeed, plaintiff admits that the bus did not even come to a full stop. While she asserts at her deposition that there was no reason for the driver to apply the brakes, as he was pulling out, she also admits that she was facing the rear of the bus at the exact time the brakes were applied, therefore she did not see out of the driver's front window.

PJI 2:165 discusses allegations of a sudden stop or jerk, mentioning that starting or stopping may not always be done smoothly. However, in order for a carrier to be liable plaintiff must satisfy the burden of proving that the movement of the bus was unnecessarily sudden, unusual and violent (*Urguhart v. NYCTA*, 85 NY2d 828).

There must be evidence that the bus was propelled forward with unusual and unnecessary force, beyond plaintiff's mere claim that driver applied the brakes for no reason discernable to plaintiff (cf., *Taylor v. Westchester Street Transport Co.*, 93 NY2d 395). Plaintiff's opinion, as contained in her depositions, that there was no reason for the bus operator to apply his brakes is without any probative value. Her attention was toward the back of the bus when the incident occurred.

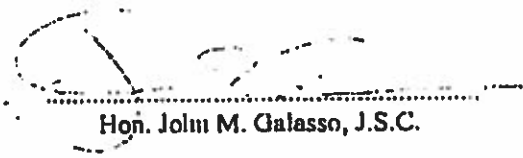
Although the Court is aware that evidence must be viewed in a light most favorable to plaintiff in determining a motion for summary judgment, it is evident to the undersigned that this is not a matter of credibility but one where plaintiff's testimony is based upon speculation. The identity of the driver does not matter since plaintiff perforce cannot raise a genuine question of fact in support of a direct case by probative evidence as a matter of law.

Plaintiff's opposition also focuses on the second cause of action sounding in an intentional tort, maintaining defendant fails to address this cause of action and, consequently, this Court cannot entertain the motion with respect to the claim.

The undersigned disagrees with this assessment, given the Court's right to search the record (see CPLR 3212). In any event, the motion by defendant was to dismiss the complaint in its entirety and "granting such other and further relief as the Court deems just and proper."

Therefore, for the same reasons that applied to the other causes of action, plaintiff has failed to raise genuine and material questions of fact that defendant breached a duty of care or that the driver's actions were intentional.

The complaint is dismissed in its entirety.



Hon. John M. Galasso, J.S.C.

RESP. APP 24

Bethune v MTA Long Is. Bus
2016 NY Slip Op 03132
Decided on April 27, 2016
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on April 27, 2016 SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Second Judicial Department
RUTH C. BALKIN, J.P.
SHERI S. ROMAN
JOSEPH J. MALTESE
FRANCESCA E. CONNOLLY, JJ.

2014-04947
(Index No. 4148/12)

[*1]Sororazam Bethune, appellant,

v

MTA Long Island Bus, respondent, et al., defendant.

The S.A. Jackson Law Firm, P.C., New York, NY (Stuart A. Jackson of counsel), for appellant.

Armienti, DeBellis, Guglielmo & Rhoden, LLP, New York, NY (Harriet Wong of counsel), for respondent.

DECISION & ORDER

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Galasso, J.), entered March 14, 2014, which granted the motion of the defendant MTA Long Island Bus for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured shortly after she boarded a bus owned and operated by the defendant MTA Long Island Bus (hereinafter the defendant), when the driver applied the brakes, causing the plaintiff to lose her balance and hurt her foot. Thereafter, the plaintiff commenced this action against, among others, the defendant, to recover damages for personal injuries. The defendant moved for summary judgment dismissing the complaint, and the Supreme Court granted the motion. The plaintiff appeals.

"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 Tr. Auth.*, 85 NY2d 828, 829-830 [internal quotation marks omitted]; see Dowdy v MTA-Long Is. Bus, 123 AD3d 655, 655; Black v County of Dutchess, 87 AD3d 1097, 1098). "[A] plaintiff may not satisfy that burden of proof merely by characterizing the stop as unusual and violent" (Lowhar-Lewis v Metropolitan Transp. Auth., 97 AD3d 728, 728-729; see Urquhart v New York City Tr. Auth., 85 NY2d at 830). "The evidence must establish that the force of the stop was of a different class than the jerks and jolts commonly experienced in city bus travel and, therefore, attributable to the negligence of [the] defendant" (Burke v MTA Bus Co., 95 AD3d 813, 813, quoting *Urquhart v New York City Tr. Auth.*, 85 NY2d at 830; see Andreca v Cash World Tours, Inc., 135 AD3d 675, 675).

Here, the defendant established its prima facie entitlement to judgment as a matter of law dismissing the causes of action alleging negligence by submitting transcripts of the plaintiff's Public Authorities Law hearing testimony and her deposition testimony, which demonstrated that the stop of the bus was not unusual or violent or of a different class than

the jerks and jolts [*2]commonly experienced in city bus travel (*see Urquhart v New York City Tr. Auth.*, 85 NY2d at 830; *Andreca v Cash World Tours, Inc.*, 135 AD3d at 676; *Alandette v New York City Tr. Auth.*, 127 AD3d 896, 897; *Guadalupe v New York City Tr. Auth.*, 91 AD3d 716, 717). The defendant's submissions were also sufficient to establish its prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging an intentional tort, as the submissions demonstrated that the driver's conduct in applying the brakes was not done to intentionally injure the plaintiff. In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

BALKIN, J.P., ROMAN, MALTESE and CONNOLLY, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

Return to Decision List

RESP. APP 25

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

SORORAZAM BETHUNE,

Plaintiff,

- against -

NATHAN MONHIAN, M.D.,

Defendant.

TRIAL/IAS PART 36
NASSAU COUNTY

Index No.: 12887/12
Motion Seq. No.: 04
Motion Date: 09/10/15
XXX

The following papers have been read on this motion:

	Papers Numbered
<u>Notice of Motion, Affirmation and Exhibits</u>	<u>1</u>
<u>Affirmation in Opposition, Affidavit in Opposition and Exhibits</u>	<u>2</u>
<u>Affirmation in Opposition</u>	<u>3</u>
<u>Reply Affirmation and Exhibits</u>	<u>4</u>

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

Defendant moves, pursuant to CPLR § 3212, for an order granting summary judgment dismissing plaintiff's Complaint¹ against him. Plaintiff opposes the motion.

Plaintiff commenced this medical malpractice action against defendant with the filing of a Summons and Complaint on or about October 11, 2012. *See* Defendant's Affirmation in

¹ While plaintiff's Complaint is captioned "Verified Complaint," the Complaint does not include a verification.

Support Exhibit C. Issue was joined by the service of an Answer² on behalf of defendant. *See* Defendant's Affirmation in Support Exhibit D.

The action was certified for trial on April 21, 2015, and the Note of Issue was filed on June 16, 2015. Defendant's motion for summary judgment is timely.

To prevail on a motion for summary judgment in a medical malpractice action, a physician bears the burden of establishing either the absence of any departure from good and accepted medical practice or that any departure did not proximately cause the plaintiff's injuries. Once a defendant has met that burden, the plaintiff must submit evidentiary facts or materials to rebut defendant's *prima facie* showing so as to demonstrate the existence of a triable issue of fact. General, conclusory allegations unsupported by competent evidence tending to establish the essential elements of medical malpractice are insufficient to defeat defendant's motion for summary judgment. *See Heller v. Weinberg*, 77 A.D.3d 622, 909 N.Y.S.2d 477 (2d Dept. 2010).

According to plaintiff's Bill of Particulars,³ the gravamen of plaintiff's claim is that defendant prescribed the wrong medication for her condition and gave incorrect instructions as to how to use the medication. *See* Defendant's Affirmation in Support Exhibit E.

In support of his motion for summary judgment, defendant submits the affirmation of an expert, Philip W. Perlman, M.D. ("Dr. Perlman"), a physician licensed to practice medicine in the State of New York, board certified in general otolaryngology. *See* Defendant's Affirmation in

² While defendant's Answer is captioned "Verified Answer," the copy of the Answer included as an exhibit in support of the motion includes an unsigned, unsworn verification.

³ While plaintiff's Bill of Particulars is captioned "Verified Bill of Particulars," the copy of the Bill of Particulars included as an exhibit in support of the motion does not include a verification.

Support Exhibit A. Dr. Perlman opines, to a reasonable degree of medical certainty, that the care and treatment rendered to plaintiff by defendant was, at all times, in accordance with good and accepted medical practice and that nothing defendant did or failed to do was a competent producing cause of any claimed injury to plaintiff. More specifically, Dr. Perlman states that:

“At the time plaintiff first presented to Dr. Monhian in July, 2010, she had a documented hearing loss, a bilateral external ear infection, and it was documented that she was complaining of tinnitus in both ears. Lotrisone was properly prescribed for both ears. Plaintiff subsequently sustained a ruptured tympanic membrane, most likely due to the presence of a diagnosed middle ear infection. At that time, the Lotrisone (used for an external ear infection) was properly stopped, and Floxin otic (used for a middle ear infection with a perforation) was prescribed to treat the middle ear infection. The symptoms of hearing loss and tinnitus plaintiff attributes to the perforation, were documented to have already existed. There is no scientific evidence that Lotrisone, which is a medication commonly and properly applied to the external ear canal, can cause a perforation. In this instance, plaintiff clearly had a middle ear infection at the time she sustained a perforation, which is a common non-traumatic cause of a perforation, caused by the build-up of pressure behind the tympanic membrane.”
See Defendant’s Affirmation in Support Exhibit A ¶ 15.

With the affirmation of his expert, defendant has made a *prima facie* showing as to the absence of both any departure from good and accepted medical practice and causation. The burden of proof therefore shifts to plaintiff to produce evidentiary proof in admissible form establishing the existence of material questions of fact. Some statement of expert medical opinion is required to defeat defendant’s motion for summary judgment. See *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

In opposition to defendant’s motion for summary judgment, plaintiff offers the affirmations of her attorney and her own affidavit, with exhibits, including certain of her medical records. None of the medical records submitted by plaintiff are certified. Uncertified medical

records and unsworn letters or reports are of no probative value in opposing a motion for summary judgment. *See Caulkins v. Vicinanzo*, 71 A.D.3d 1224, 895 N.Y.S.2d 600 (3d Dept. 2010). Moreover, plaintiff has failed to submit the requisite affidavit or affirmation of an expert medical witness in opposition to the expert affirmation submitted by defendant in support of his motion.

Plaintiff's allegations that defendant "admitted" that he made a mistake in prescribing Lotrisone for both cars is wholly unsubstantiated and, even if assumed to be true, fails to establish causation. Furthermore, the article plaintiff relies upon concerning an alert issued by the Food and Drug Administration concerning the packaging of Lotrisone does not report any of the side effects allegedly suffered by plaintiff and does not establish causation either. *See Plaintiff's Affidavit in Opposition Exhibit 4.*

Plaintiff has failed to offer proof sufficient to raise a triable issue of fact that defendant departed from good and accepted medical practice or, if he had, that any such departure caused the injuries which she alleges.

Accordingly, defendant's motion, pursuant to CPLR § 3212, for summary judgment dismissing the Complaint against him is hereby **GRANTED**.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

XXX

Dated: Mineola, New York
October 19, 2015

ENTERED

OCT 19 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE

