

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. PETER B. SKELOS,
Justice.

MARIA PAULA ORANTES,

Plaintiff,

-against-

COUNTY OF NASSAU, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA - LONG
ISLAND BUS, METROPOLITAN SUBURBAN BUS
AUTHORITY, "JOHN DOE 1," a fictitious name
representing the driver of the bus and "JOHN DOE 2,"
a fictitious name representing the driver of an Isuzu
truck whose license plate is presently unknown,

Defendants.

TRIAL/IAS PART 24
NASSAU COUNTY

MOTIONS # 01, 02
INDEX # 7590/00
MOTION SUBMITTED:
JANUARY 31, 2003

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....1
Cross Motion/Answering Affidavits.....2
Reply Affidavits.....

Defendants County of Nassau, Metropolitan Transportation Authority, MTA-Long Island Bus, and Metropolitan Suburban Bus Authority (herein "the MTA defendants") move for summary judgment on the issue of liability and on the grounds that plaintiff did not sustain a serious injury within the meaning of Insurance Law §5102(d). Plaintiff opposes the motion and cross-moves to compel the appearance of a non-party witness. For the reasons that follow, the motion is granted on the issue of liability and the cross-motion is denied.

The court will entertain this motion despite the fact that it was filed more than 120 days after the filing of the note of issue. A court has wide latitude in determining whether good cause exists to

consider a late summary judgment motion, especially where, as here, the opposing party fails to demonstrate prejudice (*Williams v Nicolaou*, 284 AD2d 451). The court notes that the motion was filed only two weeks beyond the 120 day time period, and the delay was occasioned by the availability of a witness transcript. Moreover, defendants' motion raises meritorious issues that serve the interest of judicial economy (*Samuel v A.T.P. Development Corp.*, 276 AD2d 685, 686-87).

That portion of defendants' motion which seeks summary judgment on the issue of liability is granted. In support of their motion, defendants include the sworn deposition transcript of Donnell Jones, the driver of the MTA-Long Island bus on which plaintiff was a passenger when she sustained her alleged injuries. Mr. Jones testified that he was driving the N21 bus from Glen Cove to Flushing on the evening of March 29, 1999 when he stopped at a designated bus stop located at the intersection of Northern Boulevard and Bell Boulevard in Queens to allow passengers to disembark. Mr. Jones testified that within "two seconds" of closing the bus doors, the bus was struck by another vehicle. When asked, "Was your bus moving or stopped at the time of the accident?," Mr. Jones unequivocally answered, "The bus was stopped." He stated that the bus was stopped for more than a minute when the accident occurred. He made it clear that he "wasn't getting ready to take off" from the bus stop when the bus was struck, since the accident happened just seconds after he closed the doors. Plaintiff offers absolutely nothing in opposition to contradict Mr. Jones' account of the accident. Under these circumstances, there is no basis to impose liability upon the MTA defendants (*Marchan v Wilson*, 2002 WL 31940773 [App. Term 2002]; *Reid v Courtesy Bus Co.*, 234 AD2d 531, *Casanova v New York City Transit Authority*, 279 AD2d 495; *Doris v Calia*, 222 AD2d 550; *Edney v Metropolitan Suburban Bus Authority*, 178 AD2d 398).

Plaintiff's effort to forestall summary judgment by moving to compel the testimony of a non-

party witness is unavailing. Plaintiff asserts that the testimony of Ronald Burriesce, the alleged driver of the vehicle that struck the bus in which plaintiff was a passenger, is necessary in order for plaintiff to properly prosecute her claim. She claims that such testimony is "essential" as it could "reveal facts which are at present unknown and which could further shed light on the occurrence itself." Because the importance of such testimony is self-evident, it defies logic that plaintiff would have certified the case ready for trial without having exhausted all opportunities to identify and depose said individual, who plaintiff appropriately named as a "John Doe" defendant in her complaint. Yet plaintiff certified the case without any reservation of rights relative to the unidentified driver, and even now, on the eve of trial, does not move to vacate the note of issue and re-open discovery, but merely denominates Burriesce as a "non-party witness" with information that may defeat the MTA defendants' motion for summary judgment. Plaintiff does not document the efforts made to identify this necessary witness prior to certification, and merely speculates that this witness will shed light on alleged negligence by Jones. This is clearly insufficient to defeat the MTA defendants' motion for summary judgment (*see Gillinder v Hemmes*, 298 AD2d 493, 494; *Szczotka v Adler*, 291 AD2d 444; *Perez v Brux Cab Corp.*, 251 AD2d 157, 160; *Cruz v Otis Elevator Co.*, 238 AD2d 540, 540-41). Accordingly, it is

ORDERED that the MTA defendants' motion for summary judgment is granted and plaintiff's cross-motion to compel the testimony of a non-party witness is denied. This matter shall be marked disposed.

This constitutes the decision and order of the court.

Dated: February 3, 2003

ENTERED

FEB 07 2003



PETER B. SKELOS, J.S.C.

NASSAU COUNTY
COUNTY CLERK'S OFFICE