IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

MICHELLE BUTLER,	*	
Plaintiff,	*	
v.	*	**Case No.: WDQ-05-654**
FIRST TRANSIT, INC., *et al.,*	*	
Defendants.	*	

* * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendants, First Transit, Inc. ("First Transit") and Gathel Ware ("Mr. Ware") (collectively, "Defendants"), submit the following Memorandum of Law in support of their Motion for Summary Judgment.

I. INTRODUCTION

This case arises from an alleged sudden stop of a bus on which Plaintiff was a passenger on May 26, 2002. First Transit operates the Ride-On Transit System for Montgomery County, Maryland, and employed Mr. Ware, the bus driver involved in the occurrence. The stop occurred near the intersection of Wisconsin Avenue and Langdrum Lane in Bethesda, Maryland. Immediately after Plaintiff alighted the bus and proceeded to her seat, Plaintiff contends that: (1) The bus came to "an

abrupt halt;" (2) She fell forward; and (3) She injured her left knee.[1] Complaint at ¶ 7-9. Count I of the Complaint alleges negligent operation of the bus and Count II alleges negligent maintenance of the bus, "including the failure to inspect the brakes, the failure to take the bus out of service for repairs, and the failure to service the braking system of the aforesaid bus." *Id.*

The parties have deposed Plaintiff, Defendant Gathel Ware, and Corporate Designee for Defendant First Transit, Larry L. Price, Sr., as well as exchanged written discovery in this case. That discovery has made clear that Plaintiff's entire case against Defendants is based upon Ms. Butler's assertion that the bus stopped abruptly and threw her off-balance. Significantly, there have been no other claims asserted by other passengers on the bus against these Defendants arising from the occurrence. Moreover, Plaintiff cannot identify any specific act of negligence on the part of Defendants, except to state that they were somehow negligent in their maintenance and/or operation of the bus. Simply put, Plaintiff has failed to satisfy her burden of proving a *prima facie* case of negligence, and Defendants are entitled to summary judgment as a matter of law.

II. LEGAL STANDARDS

Summary judgment is proper if the evidence before the Court establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Causey v. Balog*, 162 F.3d 795, 800 (4th Cir. 1998); *see also*, *Turner v. Kight*, 192 F.Supp.2d 391, 397-98

[1]Defendants also contest medical causation in this case. Ms. Butler reported to Suburban Hospital (transported by ambulance) and complained of right pinky finger pain only. To date, Ms. Butler's treating physician in North Carolina, David Martin, M.D., has not been made available for deposition due to professional obligations and opposing counsel's hectic trial calendar. The parties have agreed to extend the expert discovery deadline to March 30, 2006. That discovery does not bear on Defendants' present motion or inhibit the Court's ability to rule on same.

(D. Md. 2002). Rule 56 mandates summary judgment against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322; *see also, Doughty Commun., Inc. v. Novatel Computer Sys. Corp.,* 217 F. Supp. 581, 591 (D. Md. 1992). "[A] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial [and] the moving party is 'entitled to judgment as a matter of law.'" *Celotex*, 477 U.S. at 323 (citations omitted). Where there is no issue of fact to be tried, summary judgment is appropriate as it was "designed to secure the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. 317, 327 (1986), *accord Coffee v. Darby Steel Co.*, 291 Md. 241, 247. 434 A.2d 564, 567 (1981).

III. ARGUMENT

Plaintiff Has Failed To Produce Legally Sufficient Evidence Of Negligence On The Part Of Defendants.

Plaintiff complains that the bus stopped "abruptly," that she was injured as a result, and that she should be compensated. She claims that Defendants were negligent because they breached the duty of care owed to her by not providing a safe bus. However, she has offered no proof of any negligent act or failure to act on either Defendants' part.

To prove her claim of negligence, Plaintiff was required to produce evidence to show that Defendants owed her a duty, breached that duty, and by their breach, proximately caused her injuries. *Cramer v. Housing Opportunities Comm'n of Montgomery County*, 304 Md. 705, 712, 501 A.2d 35, 39 (1935). Common carriers owe the highest degree of care for the safety of their passengers but, "are not insurers of absolute safety for their passengers." *Retkowsky v. Baltimore*

Transit Co., 222 Md. 433, 440, 160 A.2d 791, 795 (1960). The degree of care which is expected of common carriers is subject to a reasonable limitation, that is, "it is not the utmost and highest, absolutely, but the highest which is consistent with the nature of their business, and its necessary requirements." *Smith v. Baltimore Transit Co.*, 211 Md. 529, 537, 128 A.2d 413, 417 (1957) (citations omitted). If a condition or defect in the bus causes injury and is such that it could or should have been discovered in the exercise of ordinary care, defendant will be considered to have had notice and thereby, a duty to plaintiff. *See id.*, 217 Md. at 537, 128 A.2d at 417. ('The generally accepted rule appears to be that if the carrier knows, or under the circumstances should have known, that a passenger has fallen from the train, it is under a duty to take such steps for his protection as are consistent with the safe operation of the train.' (citation omitted)). It is, however, the duty of passengers, once on board a bus, to protect themselves against the normal motions of the vehicle incident to public transportation. *Retkowsky*, 222 Md. at 439, 160 A.2d at 794.

In the instant case, Defendants had a duty to provide a safe bus and to use ordinary care to ensure that the bus operated safely. The evidence of negligence must rise above surmise, conjecture, or speculation, and one's right to recover may not rest on any presumption from the happening of an accident. *Jensen v. American Motors Corp., Inc.*, 50 Md. App. 226, 437 A.2d 242 (1981). Plaintiff has offered no evidence that Defendants failed to use such care. Plaintiff has produced no evidence of a specific cause or a malfunction in the bus, no evidence of a particular defect in the bus, no evidence that Defendants had any knowledge of an alleged defect, and no evidence that Defendants failed to act with reasonable care to correct such a defect.

The sole proof negligence in this case is Plaintiff's characterization that the bus stopped "abruptly" as she was finding her seat. In a long line of cases involving injuries on buses, the Maryland Court of Appeals has consistently held that even though such vehicles are common carriers and thus, held to the highest degree of care under the circumstances, the characterization of the manner of stopping and starting a bus by strong adjectives or expletives will not suffice to prove negligence on the part of the defendant. *Comm'r of Motor Vehicles v. Baltimore & A.R.R.*, 257 Md. 529, 532, 263 A.2d 592, 594 (1970) ("quick or dynamite stop"); *Retkowsky, supra,* 222 Md. at 436, 160 A.2d at 792 (wherein Plaintiff described car movement as a "sudden jerk"); *Sunthimer v. Baltimore Transit Co.*, 217 Md. 52, 53, 141 A.2d 527 (1958) ("bus started forward very sudden, too unusual for a car to start"); *Smith, supra,* 211 Md. at 532, 128 A.2d at 414 ("sudden jerk"); *Kaufman v. Baltimore Transit Co.*, 197 Md. 141, 143, 78 A.2d 464, 465 (1951) ("terrific jolt").

In order to allow the case to reach a jury on the issue of negligence in such cases, Maryland courts have required plaintiffs to produce some additional proof, other than their own description of the nature of the movement, which shows the movement to have been so abnormal and extraordinary that it could be legally found to have constituted negligence. *Comm'r of Motor Vehicles, supra,* 257 Md. at 533, 263 A.2d at 594. The rule in these cases has been adopted as a matter of public policy to avoid liability based upon a mere expression or feeling on the part of the injured which is, or may be, an exaggeration in the self-interest of a plaintiff in anticipation of a judgment against a responsible defendant. *Retkowsky*, 160 A.2d at 795.

In the instant case, Plaintiff Butler testified at her deposition on August 12, 2005 as follows:

Q: And you don't know where his feet were the minute the accident happened; right?

A: I don't recall.

Q: You don't know where his hands were when the accident happened; right?

A: I don't recall.

Q: Okay, fair to say you didn't see the driver immediately when this accident happened; right?

A: I don't recall.

* * * * * *

Q: Fair to say that you don't know what, if anything, the driver of this bus could have done to avoid this accident? . . .

A: [over objection] I don't recall.

* * * * * *

Q: You don't recall or you don't know?

A: I don't know.

Q: Okay, do you know whether there was any mechanical problems with this bus prior to the accident?

A: I don't know.

* * * * * *

Q: You don't know if anything the driver did caused this accident; do you?

A: [over objection] I don't know of anything.

* * * * * *

Q: Do you know how many feet the bus moved forward?

A: No, I don't recall.

* * * * * *

Q: Okay. How long after you got on the bus did it come to a screeching halt?

A: I don't know.

Q: And you don't know how long after you attempted to get into the seat that the bus came to the screeching halt?

A: No.

Q: Was it more than a minute?

A: I don't recall. I wouldn't say that long.

Exhibit 1, Dep. of Michelle Butler at 61-68, 73-86.

Plaintiff having failed to produce any evidence, such as proof of a defect in the bus or proof that Defendants failed to maintain sufficiently and/or operate the bus, she may not recover. As a matter of law, it is not enough to state, as Plaintiff has done here, that the bus stopped "abruptly" and therefore, there must be negligence on the part of Defendants. This quantum leap of logic is not supported by expert testimony, common sense, or Maryland law. Accordingly, Defendants are entitled to summary judgment as a matter of law.

IV. CONCLUSION

For the foregoing reasons, Defendants, First Transit, Inc. and Gathel Ware, respectfully request that judgment be entered in their favor and against Plaintiff. A proposed Order is attached.

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