

NEW YORK SUPREME COURT-COUNTY OF BRONX
PART IA-25

LOUISE JACOBS,

Plaintiff,

MEMORANDUM
DECISION/ORDER

-against

Index No.: 304947/09

YONKERS RACEWAY CORPORATION,

Defendants.

YONKERS RACEWAY CORPORATION,

Third-Party Plaintiff,

-against-

Third-Party Index No.:
83705/10

ROMAN CHARIOT, LLC and FORREST RIVER, INC.,

Third-Party Defendants.

HON. MARK FRIEDLANDER

Defendant/third-party plaintiff, Yonkers Racing Corporation ("Raceway"), moves for an order, pursuant to CPLR§3212, granting Raceway summary judgment. Raceway's motion is decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained on February 18, 2008, as a result of her tripping and falling on a "bump" while exiting a shuttle bus, because of the negligence of the defendant Raceway.

The facts are as follows: Raceway utilizes shuttle buses to transport patrons between the parking lot and its facility ("casino"). The shuttle bus ("bus") involved in the incident herein was manufactured by third-party defendant Forest River, Inc, is thirty-two feet in length and equipped to seat twenty-two passengers. The bus has two entrances (one in the front and one in the

middle), and is equipped with a ramp that can be activated for wheelchair patrons to access the front entrance. The platform at the front entrance has a slight decline towards the street, and the edge of the platform is approximately six to eight inches above the adjoining surface when the ramp is not activated. The platform consists of a steel deck with a grit-type surface and traction tape. The bus does not have a railing. It has a pole for patrons to hold onto as they exit the bus.

On February 18, 2008, plaintiff drove her motor vehicle to the parking lot near Raceway's casino. After parking her vehicle in the parking lot, she took the shuttle bus to the casino, exiting through the front door without incident and entering the casino. Approximately one half hour later, plaintiff exited the casino and boarded the bus, using the back door. The trip back to the parking lot took about five minutes. When the bus came to a stop at the parking lot, plaintiff proceeded to exit the bus through the front door. While exiting the bus, plaintiff held onto a pole with her right hand. According to plaintiff's deposition testimony, as she walked off the bus, her right foot hit "a white line" or "strip," that went across the entire exit way, and she fell forward. This "white line" or "strip" was a "bump" located at the edge of the doorway, and was "like half an inch or something."

Robert Ott, the operator of the bus, was deposed on August 8, 2011. At his deposition, he testified that he would inspect his assigned bus, including the exits. The bus was in working order on the day of the incident. He did not observe any garbage, debris, snow or ice on the exit platform. There is a hinge for the wheelchair lift, which runs from door to door and does not extend above the platform. The height of the platform at the front exit is approximately six to eight inches above the adjoining surface. Mr. Ott did not receive any complaints concerning prior accidents relating to the exit platform, and was unaware of any tripping hazards on the bus.

As a preliminary matter, plaintiff's objection to the consideration of Mr. Ott's deposition

testimony is without merit. Although unsigned, the transcript of Mr. Ott's testimony is still admissible evidence, as it was certified as accurate and no party herein challenged the accuracy of the testimony as transcribed. *Martin v. The City of New York*, 82 A.D.3d 653 (1st Dept. 2011).

After paring the myriad of allegations contained in plaintiff's bill of particulars that are completely devoid of any factual or evidentiary basis, the only possible cognizable claim by plaintiff is her assertion that the alleged "bump" or protrusion was an inherently dangerous condition, visible, apparent and existing for a sufficient length of time prior to the accident to have been discovered by Raceway and corrected.

Defendant Raceway established its entitlement to summary judgment as a matter of law by demonstrating that there was no actionable defect on the front entrance/exit of the bus. Assuming arguendo, that any imperfection existed in that area of the bus, a review of the eight color photographs of the front entrance/exit of the bus, annexed to Raceway's moving papers as (Exhibit "8"), and plaintiff's deposition testimony that the "white line," "strip" or "bump" at the edge of the doorway, was "like a half inch or something," any such possible defect is trivial in nature and fails to reveal a trap or major defect. *Cintron v. New York City Trans. Auth.*, 77 A.D.3d 410 (1st Dept. 2010). Furthermore, plaintiff has not submitted an affidavit from an expert to raise a triable issue that a dangerous condition existed.

Defendant Raceway's motion for summary judgment is granted and plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: _____

10/3/12



MARK FRIEDLANDER, J.S.C.