

Lawsuit over a CTA evacuation gets a second chance

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A state appeals panel has given a woman another chance to try to collect damages after she was hurt during an "L" train evacuation.

A published opinion released Friday by an appeals panel reverses a Cook County judge's ruling that the Chicago Transit Authority should be protected in this case by a law that grants it immunity from liability when a passenger is battered on a train by another rider.

If the woman had lost this appeal, her attorney said, it could have become more difficult for people to get compensation from the CTA when they're injured during a train evacuation.

That's because the Illinois Metropolitan Transit Authority Act holds that the CTA can't be held liable for injuries that

bus or train passengers suffer due to a crime committed by another passenger. In this case, the CTA successfully argued at the trial level that the woman was a battery victim during the evacuation.

"If there's this panic or mass evacuation, who's to say that in any of these scenarios ... that the CTA could always say that these people were [touched], and therefore there's a battery that occurred," said the woman's lawyer, Steven J. Seidman. "If you take it to the illogical extreme, when could you ever bring a case for negligence in an evacuation scenario?"

The case stems from a night in July 2007 when Marla Beth Torf was riding a Red Line train that was stopped near Chinatown and had its power turned off when somebody tried to commit suicide on the tracks.

After waiting in a train car that she said felt "like an oven" for about 90 minutes, Torf heard an evacuation announcement. A passenger on Torf's car pried the train door open, and passengers began jumping to the gravel about five feet below.

Torf said she was injured when somebody pushed her to the floor as she was trying to sit down in the open doorway to carefully exit the train. Then, another person pushed her out of the train.

She said she missed two weeks of work due to pain in her lower back, hip and hands.

Torf sued the CTA for failing to: maintain the train to avoid disruption of service between platforms; provide a safe means of egress for her to exit when the train evacuation was ordered; provide clear instructions for the evacuation; and provide assistance to her and others to min-

imize the risk of injury.

The CTA had a different view of the case and filed a motion for summary judgment on the basis that Torf's injuries were caused by a criminal assault.

Circuit Judge Kathy M. Flanagan granted the CTA's motion for summary judgment.

Flanagan ruled that Torf was pushed off the train, which was an act of criminal battery. So, Flanagan held that the incident fell within the scope of immunity that the law grants the CTA.

Torf appealed, contending that a question of fact exists about whether criminal conduct caused her injuries. She also argued that the issue of criminal battery shouldn't be part of the case because she never alleged that a crime occurred.

The 1st District Appellate Court sided
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with Torf and reversed Flanagan's ruling in a 13-page opinion written by Justice Margaret Stanton McBride.

In the appellate review, McBride considered that intent is an essential element of battery. A battery must be knowing or intentional, and not accidental.

Given that the CTA won summary judgment, McBride had to look at the evidence in the light most favorable to Torf.

"That evidence ... established that the situation in the train was chaotic," McBride wrote, noting Torf's testimony that the train car was hot, dark and lacked CTA staff.

"Under these circumstances, a reasonable person could infer that the contact made by the first person was simply incidental to this person evacuating the train or that this person was pushed into plaintiff by other evacuating passengers, which would indicate accidental contact

and would negate a finding of intentional or knowing conduct," McBride wrote.

McBride also ruled that there's insufficient evidence to conclude that the contact made by the second passenger constituted battery.

In conclusion, McBride held that questions of material fact exist about whether Torf was a battery victim. As a result, McBride ruled that it's premature to consider whether the CTA is immune from liability at this point.

The CTA was represented by chief attorney Stephen L. Wood. A CTA spokeswoman declined to comment on the ruling.

Justices Rodolfo Garcia and Robert E. Gordon concurred in the opinion, which is *Marla Beth Torf v. Chicago Transit Authority*, No. 1-09-1710.

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