

Brown v City of New York

2007 NY Slip Op 30102(U)

February 27, 2007

Supreme Court, Queens County

Docket Number: 0025499

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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SHANIA BROWN, an infant by her Mother and Natural Guardian, TASHA ELTON, and TASHA ELTON, individually,
Index
Number: 25499/04
Motion
Date: 02/13/07

Plaintiff(s),

Motion

- against -

Cal. Number: 3

Motion Seq. No. 4

THE CITY OF NEW YORK, THE NEW YORK CITY BOARD OF EDUCATION, AMBOY BUS CO., INC., KAREN BLAND, SAMUEL GROSS and EVALEE GROSS,

Defendant(s).

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The following papers numbered 1 to 10 read on this motion by defendants Evalee Gross and Samuel Gross for an order granting summary judgment on the issue of liability dismissing the complaint and any cross-claims as against said defendants.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Memo-Exhibits.....	1-5
Affirmation in Opposition-Exhibits.....	6-8
Reply Affirmation.....	9-10

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by defendants Evalee Gross and Samuel Gross for summary judgment on the issue of liability dismissing the complaint and any cross-claims as against them is granted.

Infant plaintiff alleges that she suffered injuries as a result of a motor vehicle accident involving a school bus owned by Amboy and operated by Bland, in which she was a passenger, and the motor vehicle owned by Samuel Gross and operated by Evalee Gross (hereinafter referred to as Gross).

The accident occurred at the intersection of Ocean Crest Boulevard and Bay 25th Street in Queens County on February 24, 2004.

It is undisputed that Bay 25th Street had no traffic control devices or signs governing traffic traveling on that street at the intersection with Ocean Crest Boulevard and that Ocean Crest Boulevard has a stop sign governing traffic traveling on that thoroughfare at said intersection. The uncontroverted deposition testimony of Gross indicates that at the time of the accident, the school bus operated by co-defendant Bland proceeded north on Ocean Crest Boulevard into the intersection with Bay 25th Street without stopping at the stop sign and struck the passenger side front of the vehicle operated by Gross, which was traveling Bay 25th Street.

As such, movants have made out a prima facie showing that the accident resulted solely from Bland's negligence (see Jenkins v. Alexander, 9 AD 3d 286 [1st Dept 2004]; Vehicle and Traffic Law §1142 [b]). Movants have thus established their entitlement to summary judgment as a matter of law by proffering uncontested testimony that the traffic control device governing the subject intersection controlled Bland's movement and that Gross was struck by the school bus after she had entered the intersection (see, Diasparra v. Smith, 253 AD 2d 840 [2nd Dept 1998]; Salenius v. Lisbon, 217 AD 2d 692 [2nd Dept 1995]).

The burden thereupon shifted to the opposing parties to establish any issues of fact so as to preclude the granting of summary judgment (see, Zuckerman v. City of New York, 49 NY 2d 557 [1980]). The remaining defendants have failed to meet their burden. They fail to raise a triable issue of fact as to whether Gross had been comparatively negligent (see, Balanta v. Stanlaine Taxi Corp., 307 AD 2d 1017 [2nd Dept 2003]); Carpio v. Leahy Mechanical Corp., 30 AD 3d 554 [2nd Dept 2006]); Diasparra v. Smith, supra). They neither dispute any of the testimony in Gross' deposition nor proffer any evidence so as to raise any triable issue of fact as to whether Gross was comparatively negligent.

Bland testified in her deposition (see Exhibit "B" to affirmation in opposition) that as she approached the intersection, she tried to stop, but could not because the road was slippery and the bus slid into the intersection. She stated that she did not see Gross' vehicle and did not realize that she had struck Gross' vehicle until after the impact and only after Gross had walked over to the bus and knocked on the door.

Gross testified that she saw the school bus approaching the

intersection at what she guesses was 30 to 40 miles per hour. The bus was approximately five houses distant from the intersection when she first noticed it. Gross testified that she was proceeding at a "normal pace", approximately 25 to 30 miles per hour. When asked if she slowed down prior to entering the intersection, she replied that she may have slowed down "a drop" but that she had the right of way and had no reason to stop. She stated that she was looking straight forward at the time of the impact, but right before the impact she saw out of her peripheral vision the bus bearing down on her.

A driver who has the right of way at an intersection is entitled to rely upon another vehicle to obey traffic signals requiring it to yield and has no duty to watch out for and execute evasive action to avoid being struck by the other vehicle that might fail to stop at the stop sign (see Jenkins v Alexander supra; Cenovski v. Lee, 266 AD 2d 424 [2nd Dept 1999]).

The uncontested deposition testimony of both Gross and Bland establishes that Gross is not liable as a matter of law. The attorneys for Bland, Amboy and The City merely speculate that Gross may not have proceeded with enough caution, given the alleged snowy road condition, to enable her to take evasive action. However, there is no testimony by any of the parties in their depositions that Gross was traveling at an inappropriate rate of speed or otherwise acted in any negligent manner. Bland did not even see Gross' vehicle or realize that she had struck her until Gross walked over to the bus after the collision and knocked on the door of the bus to alert Bland that she had struck her.

Accordingly, summary judgment is granted to the moving defendants and all cross-claim against them are dismissed.

Dated: February 27, 2007

J.S.C.

KEVIN J. KERRIGAN,