

**Corrigan v MTA Bus Co.**

2008 NY Slip Op 31247(U)

April 22, 2008

Supreme Court, New York County

Docket Number: 0105440/2006

Judge: Donna Marie Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 21

CORRIGAN, BRIAN

INDEX No. 105440/06

Plaintiff,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. NO. 001

MTA BUS COMPANY, et al.,  
Defendants.

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for Summary Judgment.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1 + 2

Answering Affidavits- Exhibits \_\_\_\_\_

3

Replying Affidavits \_\_\_\_\_

4 + 5

CROSS-MOTION:  YES  NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION

**FILED**  
APR 30 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 4/22/08

Donna M. Mills  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 21

-----x  
BRIAN CORRIGAN,

Plaintiff,

Index No. 105440/06

- against -

MTA BUS COMPANY, METROPOLITAN  
TRANSPORTATION AUTHORITY, EDWARD COLON,  
NEREIDA ROSARIO and EDWARD C. LOWE,

Defendants.  
-----x

**FILED**  
APR 30 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

HON. DONNA MILLS, J.:

In this negligence action, defendants Nereida Rosario ("Rosario") and Edward C. Lowe ("Lowe") move, pursuant to CPLR 3212, for summary judgment dismissing the Complaint and all crossclaims against them.

Plaintiff, Brian Corrigan ("Corrigan"), opposes the motion and cross-moves for summary judgment on the issue of liability against defendants MTA Bus Company ("MTA Bus"), Metropolitan Transportation Authority ("MTA"), and Edward Colon ("Colon").

**BACKGROUND**

Plaintiff commenced this action seeking to recover damages from defendants for personal injuries he sustained in a three-vehicle, chain-reaction accident on May 26, 2005. Plaintiff claims that his vehicle, a 2004 Pontiac Grand Am, was stopped at a red light at the intersection of Riverdale Avenue and Radford Street in Yonkers, New York, when it was struck from behind by a yellow school bus owned by Lowe and operated by Rosario. Plaintiff further claims that a commuter bus owned by MTA Bus and

MTA and operated by Colon had struck the school bus, which was also stopped at the red light immediately behind plaintiff's vehicle, causing the school bus to push forward into the rear of plaintiff's vehicle.

The Complaint essentially alleges that the accident, which resulted in serious personal injuries to plaintiff, was caused solely by the negligence of defendants in the control, maintenance, and operation of their vehicles. The Bill of Particulars contains similar allegations.

Rosario and Lowe answered generally denying the allegations in the Complaint, asserting numerous affirmative defenses, and alleging crossclaims for contribution or indemnification against MTA Bus, MTA, and Colon. The answer filed by MTA Bus, MTA, and Colon also contain general denials and affirmative defenses, as well as crossclaims for contribution or indemnification against Rosario and Lowe.

Rosario and Lowe now seek summary judgment dismissing the Complaint and all crossclaims against them. In addition to opposing the motion, plaintiff cross-moves for summary judgment on the issue of liability against MTA Bus, MTA, and Colon.

#### **DISCUSSION**

It is well settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*see Winegrad v New*

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York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York, supra*). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to defeat summary judgment (*id.*).

As stated, plaintiff seeks to recover damages for personal injuries he sustained in a three-vehicle, chain-reaction collision which occurred when a bus owned by MTA Bus and MTA and operated by Colon struck a school bus owned by Lowe and operated by Rosario, causing the school bus collide with plaintiff's vehicle.

In seeking summary judgment, Rosario and Lowe argue that they cannot be found liable for plaintiff's injuries since they were not the proximate cause of the accident. They contend that the accident was caused solely by the negligence of MTA Bus, MTA, and Colon. In fact, they adopt plaintiff's assertions that the school bus was stopped directly behind plaintiff's vehicle at the red light, and that the bus driven by Colon struck their school bus pushing it into the rear of plaintiff's vehicle.

It is well established that "a rear-end collision into a stopped vehicle creates a prima facie case of negligence on the

[\* 5 ]

part of the offending vehicle and imposes a duty of explanation on that operator" (*Cerda v Parsley*, 273 AD2d 339, 339-340 [2d Dept 2000]). When such a rear-end collision occurs, the injured occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the offending vehicle can provide a non-negligent explanation, in evidentiary form, for the collision (*Johnson v Phillips*, 261 AD2d 269, 271 [1<sup>st</sup> Dept 1999]). "The operator of the offending vehicle is in the best position to explain whether the collision was due to a reasonable, non-negligent cause" (*Cerda v Parsley*, *supra*, at 340 [internal citations omitted]). Once the operator of the offending vehicle offers a non-negligent explanation, the burden shifts to his or her adversary to raise a triable issue of fact as to whether the operator was negligent in failing to avoid the collision (*id.*).

To support their request for summary judgment, Rosario and Lowe submit, *inter alia*, transcripts from the examination before trial ("EBT") of plaintiff, Rosario, and Colon. The moving defendants also provide copies of the Police Accident Report and the MTA Bus Occurrence Report.

Here, the submissions indicate that plaintiff's vehicle was stopped at a red light, and that the school bus had come to a complete stop immediately behind plaintiff's vehicle, prior to the accident (Corrigan EBT, Not of Mot, Exh E, pp. 23-24, 25, 33; Rosario EBT, Not of Mot, Exh F, pp. 13, 14). The submissions

also provide sufficient evidence to establish that commuter bus struck the rear of the school bus, causing it to collide with plaintiff's vehicle (Corrigan EBT, Not of Mot, Exh E, pp. 25, 33; Rosario EBT, Not of Mot, Exh F, pp. 21, 22). In addition, the Police Accident Report, prepared on the date of the accident, states, in part:

Driver #1 [Colon] related that while traveling N/B on Riverdale Ave. in the above listed vehicle he was unable to stop in time due to a mechanical defect in the brakes and as a result struck vehicle #2 in the rear. Driver #2 [Rosario] related that while she was stopped at the intersection of Riverdale Ave. and Radford St. at a steady, red traffic light, she was struck in the rear by vehicle #1 and as a result struck vehicle #3 in the rear. Driver #3 [Plaintiff] related that he was stopped at a steady red signal at intersection of Riverdale Ave. and Radford St. when struck in rear by vehicle #2. MTA road supervisor - John O'Malley on scene

(Police Accident Report, Not of Mot, Exh G). Similarly, in the MTA Bus Occurrence Report, also prepared on the date of the accident, Colon offers the following description of the accident:

Going North on Riverdale in Yonkers starting at 254 Street and Riverdale, I started to hear a knocking sound every time I hit on the brakes; as I was going up Riverdale, I kept trying to find out where the sound was coming from; and when I look down on my brake pedal and then look up and I find myself to [sic] close to a school bus. I hit the brakes; but it was to [sic] late and rear end [sic] the right side of the school bus. I got distracted by the knocking noise

(MTA Bus Occurrence Report, Not of Mot, Exh H).

[\*7]

The evidentiary proof submitted on these motions satisfactorily demonstrates the school bus operated by Rosario had come to a stop before the commuter bus operated by Colon struck it in the rear and caused it to collide with plaintiff's vehicle. Moreover, Colon acknowledged in the MTA Occurrence Report that he was distracted by a knocking sound whenever he hit the brakes, and that prior to the collision, he was looking down at the brake pedal to find out the source of the noise.

On review of the submissions, the Court is satisfied that Rosario and Lowe have established, prima facie, the absence of any factual dispute as to whether they acted negligently in failing to avoid the collision that gave rise to this action. Furthermore, the submissions sufficiently demonstrate a prima facie case of negligence on the part of the operator of the commuter bus (*see Cerda v Parsley, supra*).

The opponents of summary judgment fail to raise any triable issues of fact as to whether Rosario and Lowe were negligent. Plaintiff's assertion that a triable issue of fact exists as to whether Lowe violated Vehicle and Traffic Law §1129(a) is not supported by the evidence. Vehicle and Traffic Law § 1129(a) provides that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." The plain language of this statute makes clear that "there is a violation of law when a

driver follows another too closely without adequate reason" (*Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]).

Here, as stated, the evidence adduced indicates that plaintiff's vehicle was stopped at a red light at the intersection of Riverdale Avenue and Radford Street in Yonkers, New York; that the school bus operated by Rosario had come to a complete stop immediately behind plaintiff's vehicle; and that the commuter bus operated by Colon struck the school bus causing it to collide with plaintiff's vehicle.

Nor is the Court persuaded by the efforts of MTA Bus, MTA, and Colon attempt to create triable issues of fact from Colon's EBT testimony, taken on February 21, 2007, which directly contradicts information provided on the date of the accident for the Police Accident Report and MTA Bus Occurrence Report. At his EBT, Colon testified, in essence, that the school bus struck plaintiff's vehicle before the commuter bus collided with the school bus (Colon EBT, Aff in Opp, Exh A, p. 22); that the school bus braked suddenly as it approached the intersection while the light was green (*id.*, p. 29, 40-41); and that the brakes on the commuter bus did not malfunction (*id.*, p. 46). These belated assertions, made for the first time almost two years after the accident, and in direct contradiction to statements given by Colon at the accident scene, are insufficient to raise a genuine issue of material fact which requires a trial of this action. Moreover, during his EBT, Colon testified that there were no

inaccuracies in his statements on the MTA Occurrence Report (*id.*, pp. 53-54, 58-59). Thus, in the absence of any triable issues of fact, the motion and cross motion for summary judgment must be granted.

Accordingly, it is

ORDERED that the motion for summary judgment is granted and the Complaint is hereby severed and dismissed as against defendants Nereida Rosaria and Edward Lowe; and it is further

ORDERED that the cross motion for summary judgment is granted, plaintiff is awarded judgment in his favor and against defendants MTA Bus Company, Metropolitan Transportation Authority, and Edward Colon on the issue of liability, and the action shall continue as to the issue of damages.

Dated: 4/22/08

ENTER:

*Donna M. Mills*  
J. S. C.

DONNA M. MILLS, J.S.C.

**FILED**  
APR 30 2008  
COUNTY CLERK'S OFFICE  
NEW YORK