

Ligon v New York City Tr. Auth.

2008 NY Slip Op 33365(U)

December 8, 2008

Supreme Court, Richmond County

Docket Number: 103179/2006

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No. 103179/2006
Motion No.:001**

TANIA LIGON,

Plaintiff

against

**NEW YORK CITY TRANSIT AUTHORITY,
RAYMOND REYES, UPTOWN
COMMUNICATIONS & ELECTRIC, INC.
and CHARLES DEGENHARDT**

Defendants

DECISION & ORDER

HON. JOSEPH J. MALTESE

The following items were considered in the review of these motions for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Affidavits Annexed	2,
Answering Affidavits	3, 4
Replying Affidavits	5
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Defendants New York City Transit Authority and Raymond Reyes (“Authority”) move this court pursuant to *CPLR* §§ 3211 and 3212 dismissing the complaint and all claims against it and granting Authority a summary judgment motion. The Authority alleges that the other parties have failed to state a cause of action against the Authority, that there are no issues of fact with respect to the Authority, and that the “emergency doctrine” applies to the Authority. The plaintiff cross-moves for summary judgment in favor of the plaintiff if the court grants the Authority’s motion. The Authority’s and the plaintiff’s motions for summary judgment are granted.

Facts

The plaintiff suffered personal injuries as a result of a vehicle accident that occurred on April 21, 2006 at the intersection of Richmond Terrace and Newark Avenue, Staten Island, New York. The plaintiff was a passenger in a bus operated by the Authority, which collided with a box truck operated by Uptown. The truck was making a left turn from Newark Avenue onto Richmond Terrace.

The Authority bus had seen the Uptown truck on Newark Avenue as the truck was turning into Richmond Terrace. As Charles Degenhardt, Uptown's employee, was making the turn, the accelerator pedal got stuck on the Uptown truck. Degenhardt tried to apply the emergency brakes, but the truck skid into the sidewalk on the side of the bus's lane and struck the front of the bus. Both parties agree that it took seconds in between Degenhardt's attempt to make a left turn and the accident. In an Examination before Trial, Reyes, the Authority's driver, testified that at the time of the impact his vehicle was stopped and that his first reaction was to cover his brakes for five to seven seconds.

Discussion

The Authority alleges that it is entitled to summary judgment as established by the Emergency doctrine. Under this doctrine, "when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context."¹ Although the existence and response to an emergency would normally present issues of fact, under the emergency doctrine those issues may

¹ *Koenig v. Lee*, 53 AD3d 567 [2nd Dept 1998].

be determined as a matter of law.² Hence, summary judgment may be applied.

The Authority argues that it is entitled to summary judgment because he faced an emergency situation where he had little time to react. The facts of this case resemble those of *Koenig v. Lee*, where the Second Department, Appellate division granted summary judgment to a plaintiff who faced an instantaneous cross-over emergency, with only a few seconds to react and consequently with no opportunity to avoid the collision.³ In this case, it is undisputed that Uptown's truck skid over the Authority's lane as the truck's gas pedal got stuck. It is also undisputed that there were only a few seconds in between Degenhardt's attempt to make a left turn and the accident. Under these facts, the Authority argues that it did not have time to avoid the collision. Like the plaintiff in *Koenig v. Lee*, the Authority faced an instantaneous cross-over emergency with no time to react. Hence, the Authority argues that summary judgment in its favor is proper.

The plaintiff argues that if this court grants summary judgment to the Authority, then the Court should also grant summary judgment in favor of the plaintiff, finding Uptown as solely liable for the accident.

In response to the Authority's motion and the plaintiff's cross-motion, Uptown argues that neither the Authority nor the plaintiff are entitled to summary judgment because they failed to meet their prima facie showing. Uptown argues that questions of fact remain whether defendant Reyes had time to take evasive action and whether the bus moved at the time of the accident. Also, Uptown argues that the parties rely on inadmissible proof, a police report, to support their arguments.

² *Id.*

³ *Id.*

Uptown argues that since Reyes saw Uptown's vehicle approximately four to five bus lanes away and kept the truck under his constant observation, a question of fact exists as to whether the defendant had time to take evasive action. New York case law disagrees with Uptown; "a driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic."⁴ Reyes had seen Uptown's bus before, but Uptown had always been traveling in the opposite direction. When a vehicle traveling in one direction merges suddenly in the opposite lane, an emergency situation occurs.⁵ Furthermore, "speculation that the driver in the opposing lane of traffic could have done something to avoid a vehicle crossing over a double yellow line is insufficient to defeat a motion for summary judgment."⁶ The facts reveal that Reyes's reaction was to apply the brakes at the moment of impact. As required by the emergency doctrine, his action was reasonable and prudent in this context. The expectation that the Authority bus could have done something else, in a matter of three seconds, to avoid Uptown's truck skid into the bus's lane is therefore insufficient to defeat the Authority's motion for summary judgment.

Next, Uptown maintains that the Authority was comparatively negligent in that it was stopped at the time of the impact. However, Uptown fails to explain what the Authority could have done to avoid Uptown's truck. Uptown cites *Thomas v. Ronai*, where the court held that a plaintiff was not entitled to summary judgment because she contributed to the accident by failing to look to the left when crossing the intersection.⁷ No evidence in the present case demonstrates that the Authority contributed to the accident or had an opportunity to consider an alternative action. Uptown therefore fails to raise a triable issue of fact as to whether Reyes's reaction to the emergency was unreasonable or whether any negligence contributed to the emergency.

⁴ *Eichenwald v. Chaudhry*, 17 AD3d 203 [2nd Dept].

⁵ *Id.*

⁶ *Id.*

⁷ *Thoma v. Ronai*, 82 NY2d 736 [1993].

Finally, no facts in this case are disputed, so the fact that the plaintiff cited a police report is irrelevant to the present case.

Conclusion

The application of the emergency doctrine leads to a summary judgment in favor of an actor who, faced a sudden circumstance and through no fault of its own, had no time to weigh an alternative action. That actor may not be held negligent under this urgent situation. The defendant Authority has successfully demonstrated that it faced an unexpected motor vehicle impact that precluded its driver from taking alternative courses of conduct.

Accordingly, it is hereby:

ORDERED that the Authority's motion for summary judgment in its favor is granted; it is further

ORDERED, that the plaintiff's cross motion for summary judgment in her favor is granted; and it is further

ORDERED that all parties return to DCM Part 3 for a Compliance Conference on **Wednesday, February 11, 2009**

ENTER,

DATED: December 8, 2008

Joseph J. Maltese
Justice of the Supreme Court

