

Patanude v New York City Tr. Auth.
2009 NY Slip Op 31389(U)
June 19, 2009
Supreme Court, New York County
Docket Number: 105784/2006
Judge: Harold B. Beeler
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HAROLD BEELER
J.S.C.

PRESENT: _____
Justice

PART 21

Index Number : 105784/2006
PATNAUDE, JAMES
vs.
TRANSIT AUTHORITY
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is denied as per annexed decision

FILED
JUN 26 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/22/09

[Signature]

HAROLD BEELER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X
JAMES PATANUDE and FLENOY WITHERS,
Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY (MABSTOA), MICHAEL
DEAS, THE CITY OF NEW YORK, NEW YORK CITY
FIRE DEPARTMENT and JOHN BARRY
Defendants
-----X

**Index No. 105784/2006
SEQUENCE MS003
DECISION & ORDER**

FILED
JUN 26 2009
COUNTY CLERK'S OFFICE
NEW YORK

HAROLD B. BEELER, J.S.C.:

Defendants New York City Transit Authority, Manhattan and Bronx Surface Transit

Authority, and Michael Deas (collectively, "movants") move for summary judgment dismissing the claim against them, on the grounds that any alleged negligence on the part of defendants was not the proximate cause of plaintiffs' injuries. Plaintiffs oppose the motion; co-defendants have not submitted opposition. For the reasons discussed herein, the motion is denied.

On September 29, 2005, plaintiffs were passengers at the rear portion of movants' bus, driven by Deas. The bus proceeded along 125th Street, a two-way street separated by double yellow lines, each side consisting of two traveling lanes and a bus stop lane closest to the sidewalk. Deas sought to discharge passengers at the designated bus stop, but was unable to do so because of a second bus parked in that stop. Instead, he pulled behind a third bus parked in the center traveling lane, parked in that lane, and stopped the bus. The parties' testimony varies, but at the very least, the rear portion of movants' bus was jutting out at least part of the way into the far left lane closest to the double yellow line.

While the bus was parked, an emergency fire truck came around the corner with its lights flashing and sirens on. Deas testified that he did not hear the sirens. The fire truck collided into the rear portion of movants' bus, causing plaintiffs' alleged injuries. Deas alleges that at the time of impact, he was discharging passengers. Plaintiffs testified that the doors were closed at the time of impact, and therefore they claim that Deas could not have been discharging passengers. Plaintiffs do not dispute that the bus was parked at the moment it was hit.

Defendants argue that any alleged injuries were not proximately caused by Deas's negligence, and allege that these injuries were caused solely by the co-defendants.¹

New York City Traffic Regulations require that a bus must only pick up or discharge passengers at designated bus stops, and it is undisputed that Deas stopped to discharge passengers in a traveling lane that was not so designated. Nevertheless, violation of this regulation does not automatically expose defendants to liability where a parked bus is hit from behind. In *Sheehan v. City of N.Y.*, 40 N.Y.2d 496, 500, 354 N.E.2d 832 (1976), the defendant's bus was slowing down to make a stop, allegedly unable to pull into the parking lane because of parked cars. A city garbage truck crashed into the rear of the parking bus, injuring the bus's passenger. *Id.* at 499. The garbage truck's driver, who saw the bus before he crashed, conceded negligence. *Id.* at 503. The court granted summary judgment to the defendant bus, holding that any alleged negligence on the part of the bus was not the proximate cause of the collision. *Id.* Rather, presence of the bus in the traveling lane "merely furnished the condition or occasion for the occurrence of the event rather than its causes." *Id.* The court noted that it was no different than if the bus had continued to drive down the traveling lane without stopping, or if it properly

¹ At this juncture, the court takes no position on co-defendants' negligence, or lack thereof.

drove into the parking lane, and then back into the traveling lane. *Id.* Therefore, the bus was merely in one place it had a right to be, as opposed to another place it had a right to be. *Id.* See also *Haylett v. New York City Trans. Auth.*, 251 A.D.2d 373, 674 N.Y.S.2d 75 (2d Dept 1998) (granting summary judgment to defendant truck, where transit bus was unable to park in the bus lane because truck was negligently parked in that location). Compare *Dowling v. Consolidated Carriers Corp.*, 103 A.D.2d 675, 478 N.Y.S.2d 883 (1st Dept 1984) (denying summary judgment to defendant buses, distinguishing *Sheehan* on the basis that buses were illegally parked on the shoulder of state highway, which is unacceptable except during an emergency).

More recently, in *White v. Diaz*, 49 A.D.3d 134, 135, 854 N.Y.S.2d 106, 107 (1st Dept 2008), the First Department denied a motion for summary judgment where defendant's Access-A-Ride van was double-parked, with his hazard lights on, while waiting to pick up a passenger. The driver testified that he could find an available parking spot on the street, and he did not see the apartment's parking lot. *Id.* The Access-A-Ride van was rear-ended by another van while plaintiff was boarding the Access-A-Ride. *Id.* The driver of the second van was falling asleep behind the wheel. *Id.* The First Department, taking *Sheehan* into consideration, denied summary judgment and held that a "reasonable jury could find that a rear-end collision is a reasonably foreseeable consequence of double parking for five minutes on a busy Manhattan street." *Id.* at 139, 854 N.Y.S.2d at 110. See also *Walters v. City of New York*, 23 Misc.3d 1127(A) (Sup. Ct. N.Y. Co. 2009). It reasoned that a jury could find that if the van had pulled over to the curb or in the nearby parking lot, it would not have been in the path and plaintiff would not have been injured. *White*, 49 A.D.3d at 139, 854 N.Y.S.2d at 110.

With these precedents to guide the court, plaintiffs argue that there are two material issues

of fact that preclude this court from ruling in defendants' favor. First, plaintiffs suggest an issue of fact as to whether Deas should have heard the siren prior to discharging passengers, such that his stopping the bus close to the intersection in the traveling lane of travel was reckless or negligent. Second, there is an issue of fact as to whether Deas was discharging passengers at the time, which allegedly precluded him from driving away immediately after he heard or should have heard the siren.

Although the court recognizes that both of the above-mentioned factual issues are in dispute, it disagrees that either are material issues on this motion. The obligation of a vehicle, upon awareness of an emergency vehicle seeking to pass, is to pull over and let the emergency pass. N.Y. Vehicle and Traffic Law § 1144. The court declines to create a duty for an already parked vehicle to continue driving where an emergency vehicle needs to pass.

Nevertheless, there is an issue of fact as to movants' negligence and as to whether such negligence was the proximate cause of plaintiffs' injuries. Defendant does not dispute that at least the rear portion of the bus extended into the traveling lane closest to the yellow line, and other testimony suggests that the entire bus may have been in that lane. If the former is true, a rear-end collision is foreseeable; if the latter is true, such a result is almost inevitable. Therefore, unlike in *Sheehan*, the bus was not "in a place where it had a right to be." Under these circumstances, a reasonable jury may find that the bus was capable of completely parking into the middle lane without occupying the far left lane, and that a rear-end collision was a foreseeable result of utilizing both lanes while discharging passengers. *See White*, 49 A.D. 139, 854 N.Y.S.2d at 110; *Walters*, 23 Misc.3d 1127(A).

Accordingly, defendant's motion for summary judgment is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
June 19, 2009

ENTER:



Harold B. Beeler, JSC

HAROLD BEELER
J.S.C.

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