

Barravecchio v New York City Tr. Auth.

2010 NY Slip Op 30258(U)

February 3, 2010

Supreme Court, Richmond County

Docket Number: 104397/07

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND

ROBERT R. BARRAVECCHIO and LISA
 BARRAVECCHIO,

Plaintiff(s),

-against-

THE NEW YORK CITY TRANSIT AUTHORITY
 (NYCTA), METROPOLITAN TRANSPORTATION
 AUTHORITY (MTA), MANHATTAN AND BRONX
 SURFACE TRANSPORTATION AUTHORITY
 (MABSTOA), JOHN DOE, MICHAEL S. SENTINA
 and STEPHANIE SENTINA,

Defendant(s).

DCM PART 6

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No. 104397/07

Motion No. 2767 - 002
 3316 - 003

The following papers numbered 1 to 5 were fully submitted on the 3rd day of December, 2009.

Papers
 Numbered

Notice of Motion of Defendants NEW YORK CITY TRANSIT
 AUTHORITY, METROPOLITAN TRANSPORTATION
 AUTHORITY s/h/a METROPOLITAN TRANSPORTATION AUTHORITY and
 MANHATTAN and BRONX SURFACE TRANSIT OPERATING
 AUTHORITY s/h/a MANHATTAN and BRONX SURFACE
 TRANSPORTATION AUTHORITY,
 with Supporting Papers and Exhibits
 (dated August 15, 2009) _____ 1

Notice of Cross Motion and Affirmation in Partial Opposition of Defendants
 MICHAEL S. SENTINA and LISA SENTINA,
 with Supporting Papers and Exhibits
 (dated September 30, 2009) _____ 2

Affirmation in Opposition of Plaintiffs to the Motion and Cross Motion
 (dated October 15, 2009) _____ 3

Affirmation of Defendants in Partial Opposition to SENTINAS' Cross Motion

BARRAVECCHIO v. NYCTA, et al.

(dated November 23, 2009) _____ 4

Reply Affirmation of Defendants to Plaintiffs' Opposition

(dated November 23, 2009) _____ 5

Upon the foregoing papers, the motion (No. 2767) of defendants THE NEW YORK CITY TRANSIT AUTHORITY, THE METROPOLITAN TRANSPORTATION AUTHORITY, and THE MANHATTAN AND BRONX SURFACE TRANSPORTATION OPERATING AUTHORITY for dismissal of the complaint, or, in the alternative, summary judgment, is granted; the cross motion (No. 3316) of defendants MICHAEL S. SENTINA and STEPHANIE SENTINA is denied.

Plaintiffs ROBERT BARRAVECCHIO and LISA BARRAVECCHIO commenced this action to recover damages for injuries allegedly sustained when MR. BARRAVECCHIO (hereinafter "plaintiff") was struck by a motor vehicle owned by defendant STEPHANIE SENTINA and operated by defendant MICHAEL S. SENTINA, while he was attempting to cross the street after exiting a NEW YORK CITY TRANSIT AUTHORITY bus. According to the complaint, defendants THE NEW YORK CITY TRANSIT AUTHORITY, THE METROPOLITAN TRANSPORTATION AUTHORITY, and the MANHATTAN and THE BRONX SURFACE TRANSPORTATION OPERATING AUTHORITY (hereinafter collectively referred to as "defendants"), were negligent in their ownership, maintenance, operation and control of the subject bus in creating a hazardous condition by allowing passengers to disembark in a dangerous area. According to plaintiffs, the bus failed to stop at the official bus stop, but was allowing passengers to exit the bus while stopped partially in an intersection behind another bus

BARRAVECCHIO v. NYCTA, et al.

that was stopped in front of it at the official bus stop. After exiting the bus, MR.

BARRAVECCHIO allegedly walked along side of the bus to the rear, and was struck by the SENTINA vehicle when he attempted to cross the street as the bus was pulling away.

In their motion, defendants contend that there is no proof that the negligence of the bus driver in allowing passengers to disembark at the subject location was a substantial cause of MR. BARRAVECCHIO's injuries. According to defendants, MR. BARRAVECCHIO chose to walk towards the rear of the bus and cross the street at that location, rather than wait for the bus to move. Thus, it is claimed that his own actions broke the chain of causation between the actions of the bus driver and the resulting injuries. In addition, defendants contend that the SENTINA vehicle that struck MR. BARRAVECCHIO was a superceding or intervening cause, which negates any negligence on the part of these defendants. Finally, defendants contend that the duty of care owed to a passenger was fulfilled when the passenger alights from the bus safely, and that it bears no duty beyond that point.

In their cross motion for summary judgment dismissing plaintiffs' claims and all cross claims against them as well as in partial opposition to defendants' motion, codefendants MICHAEL S. SENTINA and STEPHANIE SENTINA contend that MR. SENTINA was stopped at a red light on Fingerboard Road, and that two New York City Transit buses were stopped on the intersecting service road in front of him. According to MR. SENTINA, one bus was stopped at the bus stop, and the other bus was stopped behind it and extended into the intersection. As the light turned green, he proceeded into the intersection, and when the bus pulled away, he only saw plaintiff standing on the double yellow lines which separated the north and southbound lanes

BARRAVECCHIO v. NYCTA, et al.

of the service road immediately before striking him. According to MR. SENTINA, plaintiff made no reasonable effort to ensure that he was able to cross the street safely. Instead, after plaintiff exited the bus, he walked along the curbside to the rear of the bus, which completely blocked MR. SENTINA's view of vehicles traveling northbound on Fingerboard Road, and then stepped out from behind the bus into the northbound lane of Fingerboard Road as the bus pulled away. Thus, MR. SENTINA argues that he had no opportunity to avoid striking plaintiff, and that it was plaintiff's actions that caused the accident.

In partial opposition to municipal defendants' motion, MR. SENTINA contends that he had a green light at the intersection and that the northbound lane of traffic was clear for him to pass the bus. In addition, he contends that he had no reason to anticipate that anyone would be crossing Fingerboard Road from behind the bus, thereby implicating the bus driver's actions in the ensuing accident if for no other reason than that by extending into the southbound lane of travel, the second bus completely blocked his view of any person who may have been walking along the curb side of the bus.

Plaintiffs oppose both motions and contend that questions of fact exist as to whether, *e.g.*, the bus driver breached his duty to his passengers by failing to stop at a place where they might safely disembark and leave the area. In addition, plaintiffs contend that although the lead bus stopped in the intended bus stop, it did not relieve defendants of their duty of care toward their passengers. According to plaintiffs, MR. BARRAVECCHIO was not discharged from the bus at the proper location and therefore, was not provided with a reasonably safe place to alight and resume his travels. In addition, plaintiffs contend that the driver was negligent in stopping and

BARRAVECCHIO v. NYCTA, et al.

opening the doors while the bus was partially protruding into the intersection of the service road and Fingerboard Road. Plaintiff claims that he needed to cross Fingerboard Road after exiting the bus, and that he observed that the pedestrian cross-walk sign was indicating that it was safe for him to cross. However, as he walked toward the back of the bus, the cross-walk sign began flashing “DON’T WALK”. Nevertheless, plaintiff continued to cross, and when the bus pulled away and the intersection was no longer blocked, he was struck by the northbound SENTINA vehicle, which plaintiff claims jumped the light controlling traffic along Fingerboard Road, drove around the back of the bus and struck him while he was still in the roadway.

In this way, plaintiffs contend that the municipal defendants have failed to establish as a matter of law that they satisfied their duty to their passengers since it is undisputed that the bus on which MR. BARRAVECCHIO was riding failed to drop-off its passengers at the designated location and, instead, dropped them off in the middle of the intersection with Fingerboard Road. In addition, MR. BARRAVECCHIO contends that his actions were not the sole cause of the accident, and that the actions of the bus driver and MR. SENTINA all contributed to the accident. Thus, he maintains that his actions did not constitute an independent or superceding cause of the accident.

Similarly, plaintiffs contend that the SENTINAS’ cross motion should be denied since they have also failed to establish as a matter of law the MR. SENTINA was not negligent in the operation of his vehicle. In addition, plaintiffs contend that there is proof indicating that MR. SENTINA disregarded the traffic signal in violation of the Vehicle and Traffic Law §1110, and

BARRAVECCHIO v. NYCTA, et al.

that he was required to exercise a greater degree of caution when he saw that the bus dropping-off its passengers was obscuring his view of the intersection.

In opposition to codefendant SENTINA's cross motion, the municipal defendants contends that MR. SENTINA's vehicle striking plaintiff was independent of any negligence on the part of the subject bus driver, and does not raise questions of fact precluding an award of summary judgment in their favor.

In order to obtain summary judgment, a movant must establish its defense or cause of action sufficiently to warrant a court in directing judgment in its favor as a matter of law (*see* Zuckerman v. City of New York, 49 NY2d 557, 562). The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of the material questions of fact on which its claim rests (*id.*). Here, it is the opinion of this Court that the municipal defendants have sustained this burden, and that plaintiffs have failed to submit sufficient proof to raise material issue of fact regarding their negligence.

The law is well established that the duty of care owed by a common carrier to an alighting passenger is to provide a reasonably safe place where the passenger can alight safely, and "to exercise reasonable and commensurate care in view of the dangers to be apprehended" (Fagan v. Atlantic Coast Line R.R. Co., 220 NY 301, 306-307). Thus, the carrier's duty terminates when it provides the passenger a safe alighting point (*see* Blye v. Manhattan & Bronx Surface Tr. Operating Auth., 124 AD2d 106, 109, *affd* 72 NY2d 888).

Here, the proof indicates that plaintiff was afforded a safe place to alight from the bus, and that he proceeded safely off the bus. The proof also indicates that any further decision by plaintiff

BARRAVECCHIO v. NYCTA, et al.

to proceed as he did was voluntary on his part, and not the result of the actions of defendants' driver. Although the bus driver may have stopped his bus partially in the intersection because another bus was stopped in front of him, the proof indicates that plaintiff was struck by the SENTINA vehicle after he chose to walk into the street from behind the bus against a flashing "DON'T WALK" sign, and at a place where MR. SENTINA claims that he could not be seen until it was too late to avoid contact. "[E]ven when the operator of [a bus] is in violation of a traffic regulation, but a passenger makes an independent and voluntary choice of departing from a safe alighting point onto a hazardous road condition, caused by the improper placement of the [bus], courts will not impose liability on the common carrier" (*id.* at 109). These were intervening acts which preclude a finding that the action of the bus driver was a proximate cause of the accident (*see Brooks v. Manhattan & Bronx Surface Tr. Operating Auth.*, 94 AD2d 656).

With regard to the codefendants' cross motion for summary judgment, the conflicting versions of the accident presented by MR BARRAVECCHIO and MR. SENTINA, represent triable issues of fact which prevent this Court from awarding summary judgment and dismissing the complaint against the SENTINAS.

Accordingly, it is

ORDERED that the motion for summary judgment of defendants THE NEW YORK CITY TRANSIT AUTHORITY, THE METROPOLITAN TRANSPORTATION AUTHORITY and THE MANHATTAN AND BRONX SURFACE TRANSPORTATION AUTHORITY is granted; and it is further

BARRAVECCHIO v. NYCTA, et al.

ORDERED that the complaint and all cross claims as against these defendants are hereby severed and dismissed; and it is further

ORDERED that the cross motion for summary judgment of defendants MICHAEL S. SENTINA and STEPHANIE SENTINA, is denied; and it is further

ORDERED that the Clerk enter judgment accordingly.

E N T E R,

/s/ Philip G. Minardo
J.S.C.

Dated: February 3, 2010