

Pearson v Francis

2014 NY Slip Op 33230(U)

January 15, 2014

Supreme Court, Bronx County

Docket Number: 21149/13

Judge: Mitchell J. Danziger

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NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 3

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

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule	
Appearance	<input type="checkbox"/>

-----X
AISHA PEARSON,

Action #2
Index No. 21149/13

Plaintiff,

LLOYD FRANCIS, NEW YORK CITY TRANSIT
AUTHORITY,

Defendant.

-----X

Hon. MITCHELL J. DANZIGER

GABRIEL ODAME AND NANA ASARE,

Justice

Action #1
Index No. 307903/12

Plaintiff,

LLOYD FRANCIS, NEW YORK CITY TRANSIT
AUTHORITY,,

Defendant.

-----X

The following papers numbered 1 to 2 Read on this motion, SUMMARY JUDGMENT LIABILITY, noticed on JANUARY 6, 2013, and duly submitted as no. _____ on the Motion Calendar of _____.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits	2	
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-		
Memorandum of Law		

In this action for personal injury arising from, *inter alia*, the negligent operation of defendants' vehicles, plaintiff in Action #2, AISHA PEARSON (Pearson), moves seeking an order granting her partial summary judgment on the issue of liability on grounds that as an innocent passenger in the vehicle owned by defendant NEW YORK CITY TRANSIT AUTHORITY (NYCTA) and operated by defendant LLOYD J. FRANCIS (Francis), she bears no liability for the accident herein. The instant motion is unopposed.

For the reasons that follow hereinafter, Pearson's motion is granted.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, a defendant seeking summary judgment must establish prima facie entitlement to such relief as a matter of law by affirmatively demonstrating, with evidence, the merits of the claim or defense, and not merely by pointing to gaps in plaintiff's proof (*Mondello v DiStefano*, 16 AD3d 637, 638 [2d Dept 2005]; *Peskin v New York City Transit Authority*, 304 AD2d 634, 634 [2d Dept 2003]). Once movant meets the initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence, generally also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman* at 562).

It is well settled that in an action involving a motor vehicle accident "[t]he right of an innocent passenger to summary judgment on the issue of whether he or she was at fault is not restricted by potential issues of comparative negligence as between two or more defendant drivers (*Medina v Rodriguez*, 92 AD3d 850, 850 [2d Dept 2012]; *Garcia v Tri-County Ambulette Service, Inc.*, 282 AD2d 206. 207 [1st Dept 2001]). Accordingly, when plaintiff establishes that he or she bears no liability for an accident and that one or more defendants are responsible, extant issues of fact with respect to the apportionment of liability between the defendants will not preclude summary judgment in plaintiff's (*id.*)

Here, a review of the evidence submitted by Pearson, namely her Examination Under Oath transcript, establishes that she was involved in an accident on January 1, 2012 while a passenger in NYCTA's bus. Specifically, while she was on the bus with her two children, the bus, while moving, was involved in a collision with another vehicle. NYCTA's accident investigation report, also submitted by Pearson, indicates that the accident occurred when both Francis, who was operating NYCTA's bus and defendant GABRIEL ODAME (Odame) who was operating his vehicle were traveling in the same direction. A collision occurred as the vehicles proceeded down the roadway when Odame made a right turn from the roadway's left lane, crossing in front of the bus. NYCTA's report further indicates that the accident occurred, in part, as a result of multiple acts and omissions by Francis, such as failing to use his

horn or come to a stop.

Based on the forgoing, Pearson establishes that she in no way contributed to the happening of the instant accident, thereby establishing prima facie entitlement to summary judgment on the issue of her negligence (*Garcia* at 207 ["Plaintiff, as an innocent rear-seat passenger in one of the vehicles who cannot possibly be found at fault under either defendant's version of the accident, is entitled to partial summary judgment . . . plaintiff should have been granted partial summary judgment on the issue of liability"]). Pearson also establishes that defendants were negligent and the cause of the instant accident. Specifically, insofar as a violation of a traffic law, absent an excuse, constitutes negligence (*Delgado v Martinez Family Auto.*, 2014 NY Slip Op 00172 [1st Dept 2014]), the evidence demonstrates that Odame, by making a right turn from the left lane, violated VTL § 1128 (a) which requires that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Pearson also establishes Francis', and that, therefore NYCTA's liability because NYCTA's own report indicates the instant accident was the result of a legion of acts and omissions by Francis (*Delgado*, 2014 NY Slip Op 00172 [Plaintiff, a passenger in one of two vehicles involved in an accident, granted summary judgment on the issue of liability because she established the absence of any liability on her part and established that both

defendants were liable for the accident. Court held that issues with respect to the comparative negligence between the defendants did not preclude summary judgment in plaintiff's favor)).

There being no opposition to the instant motion, no issues of fact preclude partial summary judgment in favor of Pearson on the issue of her culpable conduct and defendants' liability. It is hereby

ORDERED that Pearson bears no liability with respect to the instant accident and that Francis, NYCTA, and Odame are liable for the same. It is further

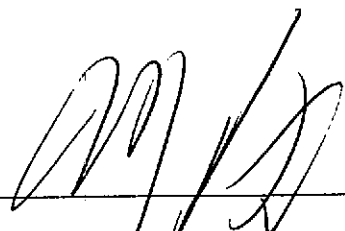
ORDERED that the Pearson serve a copy of this Order with Notice of Entry upon all defendants within thirty (30) days hereof.

This constitutes this Court's decision and Order.

Dated:

1/15/14

Hon.



MITCHELL J. DANZIGER, J.S.C.