

Vanderhall v MTA Bus Co.
2017 NY Slip Op 30688(U)
March 31, 2017
Supreme Court, New York County
Docket Number: 158798/15
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY/

PRESENT: HON. LYNN R. KOTLER, J.S.C.PART 21JORDEAN VANDERHALL

INDEX NO. 158798/15

- v -

MOT. DATE

MTA BUS COMPANY et al.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for summary judgment

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits

ECFS Doc. No(s). 13-19

Notice of Cross-Motion/Answering Affidavits — Exhibits

ECFS Doc. No(s). 23, 26

Replying Affidavits

ECFS Doc. No(s). 27, 32

This personal injury action arises from a motor vehicle accident. Plaintiff moves for summary judgment on the issue of liability. Defendants oppose the motion and cross-move for summary judgment in their favor. Issue has been joined but note of issue has not yet been filed. Therefore, summary judgment relief is available. For the reasons that follow, plaintiff's motion is denied and the cross-motion is granted.

The following facts are based upon plaintiff's affidavit. On September 23, 2014, at approximately 11:30 am, plaintiff was a passenger on a Q22 bus heading towards Kings Plaza in Brooklyn, New York. Plaintiff was seated in the last row in the back of the bus. After riding on the bus for approximately five minutes, plaintiff claims that the bus "suddenly jerked forward causing [her] to be thrown out of [her] seat."

Plaintiff further states that immediately after her fall, she "observed that there was a car in front of the bus and the operator of that vehicle was checking the rear of her car for property damage." Based on this observation, plaintiff opines that "it is [her] belief that the bus struck the rear of that vehicle" but admits that she "was seated too far in the back fo the bus to have seen the impact" and "simply felt the movement of the bus."

Defendants have provided the sworn affidavit of Edgardo Ponce, the operator of the bus in question at the time the accident allegedly occurred along with MTA Bus Company's ("MTA Bus") Supervisor's Investigation Report and Bus Operator's Report. Mr. Ponce states that while operating the bus on September 23, 2014 at approximately 11:14 am, a car in front of the bus stopped at the intersection stop sign. That car was a grayish blue sedan (the "Car"). After it stopped at the intersection, the Car moved forward into the intersection and Mr. Ponce moved his bus forward and stopped at the stop sign in the

Dated: 3/31/17HON. LYNN R. KOTLER, J.S.C.

1. Check one:

☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. Check as appropriate: Motion is

☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER

3. Check if appropriate:

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

same intersection.

Mr. Ponce then proceeded into the intersection at which time the Car, which was in the middle of the intersection, “abruptly and without any foreseeable or visible reason slammed its brakes on.” At that moment, Mr. Ponce was driving his bus into the intersection at a speed of approximately one to two miles per hour. As a result of the Car slamming its brakes, Mr. Ponce applied the brakes on the bus to avoid a collision with the Car. The bus stopped approximately one foot from the rear of the car. Mr. Ponce states that “[t]here was no other action [he] could have taken to avoid a collision with the car ahead of the bus other than to apply [his] brakes.”

Further, Mr. Ponce states that “[n]o contact occurred between the bus and the car.” Mr. Ponce admits that both he and the operator of the Car inspected the subject vehicles and ensured that no contact had been made. Then, the operator of the Car “left the scene after telling [Mr. Ponce] everything was okay and that no contact had been made.”

When Mr. Ponce returned to the bus, a passenger named Debra Ann Benjamin informed him that she needed medical assistance because the movement of the bus caused her right shoulder to come into contact with the metal bars inside the bus. Mr. Ponce claims that “[n]o one but her requested medical assistance on the bus [he] operated that day.” Mr. Ponce maintains that he never saw or spoke to plaintiff before based upon his review of her affidavit and her New York State driver’s license.

The MTA Bus Incident Report confirms Mr. Ponce’s account of the events and also indicates that an inspection of the bus was conducted shortly after the incident occurred and there was no evidence of the bus being involved in a collision. Photographs were also taken of the bus after the incident and those photographs have been provided to the court.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court’s function on these motions is limited to “issue finding,” not “issue determination” (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

In support of her motion, plaintiff argues that she is entitled to summary judgment on the issue of liability since the bus was involved in a rear-end collision with the Car. While “[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident” (*Matos v. Schez*, 2017 NY Slip Op 01306 [Feb 2017]), there is no evidence here that such a collision occurred. As a result, defendants’ have established the absence of a triable issue of fact on this point. In plaintiff’s own affidavit, she admits that she “didn’t see the bus hit the car” but rather just felt it stop. Mr. Ponce’s account of the underlying events as well as the MTA Bus reports and photographs of the bus establish that there was no collision.

The court rejects plaintiff's counsel's argument advanced in reply that the fact the Mr. Ponce and the Car operator inspected their vehicles after the incident can support a finding that a collision occurred by a reasonable fact-finder. This argument is mere conjecture and is not supported by any admissible evidence. Accordingly, plaintiff's motion must be denied.

In support of their motion, defendants maintain that they are entitled to summary judgment since Mr. Ponce stopped his bus as a result of an emergency, to wit, the sudden and unexpected stop made by the Car in the middle of an intersection right in front of the bus (see i.e. *Nieves v. Manhattan and Bronx Surface Transit Operating Authority*, 31 AD2d 359 [1st Dept 1969]). The court agrees.

In turn, plaintiff has failed to raise a triable issue of fact sufficient to defeat the motion. Plaintiff has not identified any facts which could establish that Mr. Ponce did not stop the bus as a result of an emergency or that the emergency was created or contributed to by Mr. Ponce. Plaintiff did not see the purported collision therefore plaintiff has no personal knowledge to offer about the nature of the emergency described by Mr. Ponce. Plaintiff does not claim that the bus was traveling at a high rate of speed.

Plaintiff's counsel argues that Mr. Ponce "should have been properly observing the intersection and, therefore, would have seen that the [Car] did not clear the intersection before attempting to move the bus across the same intersection." This argument goes against ordinary common sense and otherwise, such a duty is not supported by any statute or caselaw. Further, plaintiff argues that the issue of whether Mr. Ponce's conduct in response to the emergency was reasonable is for the jury to decide. However, this argument fails to recognize that such a triable issue of fact only goes to the jury when a reasonable fact-finder could conclude based upon admissible evidence and testimony that Mr. Ponce's actions were not reasonable in response to the Car suddenly slamming on its brakes in the middle of the subject intersection. Since there are no facts from which a reasonable jury could conclude that Mr. Ponce's actions were not reasonable, defendant's motion for summary judgment must be granted and this case dismissed.

Finally, plaintiff's counsel asserts in the last paragraph of her affirmation in opposition to defendant's cross-motion that summary judgment is premature and depositions are needed to "explore the issues raised in [Mr. Ponce's] affidavit and ascertain the weather conditions, speed of the vehicles and the distances maintained between said vehicles." The court disagrees.

Summary judgment is premature when "facts essential to justify opposition may exist but cannot then be stated" (CPLR 3212[f]). Here, the court finds that while depositions have not been conducted, summary judgment is not premature. Plaintiff has not established that weather conditions are relevant to the material issues in this case, and in any event, that she is entitled to discovery from defendants concerning weather conditions. Further, defendants have submitted Mr. Ponce's sworn affidavit attesting to what happened with respect to the underlying incident and plaintiff herself admits she has no personal knowledge about why the bus suddenly braked.

Accordingly, plaintiff's motion for summary judgment on the issue of liability is denied and defendants' cross-motion for summary judgment dismissing the complaint is granted.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that plaintiff's motion for summary judgment on the issue of liability is denied; and it is further;

ORDERED that defendants' cross-motion for summary judgment dismissing the complaint is granted; and it is further

ORDERED that the complaint is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated:

3/31/17
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.S.C.