

Jiminez v Rodriguez
2018 NY Slip Op 30805(U)
May 1, 2018
Supreme Court, New York County
Docket Number: 453185-2015
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: TRANSIT PART: 21

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MARIA JIMINEZ,

Plaintiff,

Index # 453185-2015

-against-

DECISION AND ORDER

Mot Seq. 2

OMAR RODRIGUEZ, MANHATTAN and BRONX
SURFACE TRANSIT OPERATING AUTHORITY,
NEW YORK CITY TRANSIT AUTHORITY,
CHARLES TORRES and HERTZ VEHICLES LLC,

Defendant(s).

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYCEF #
Defendants' Motion/ Affirmations/Memo of Law	<u>1</u>	53-67
Plaintiff's Memo of Law in Opposition	<u>2</u>	69-82
Defendant Torres's Affirmation in Opposition	<u>3</u>	84-87

LISA A. SOKOLOFF, J.

Defendants Omar Rodriguez, a bus operator, and MABSTOA and NYCTA (collectively, "Transit"), move for summary judgment seeking to dismiss Plaintiff's claims and the cross-claims of co-defendant Charles Torres, a vehicle operator, arising out of a two-vehicle accident that occurred on March 13, 2015 at 8:40 pm on Lenox Avenue just north of West 135th Street in Manhattan.

Rodriguez was operating an articulated M101 Transit bus northbound on Lenox Avenue before the accident. Torres was operating a white Buick sedan owned by Hertz in which plaintiff Maria Jimenez was a passenger. It was also proceeding northbound on

Lenox pre-accident. Rodriquez claims the Torres' vehicle struck the left rear side of the bus. Torres claims that the bus sideswiped his car as the front of the bus moved to the right and the rear shifted to the left. In a Transit accident report, Torres allegedly claimed the bus made a right turn from West 135th Street onto northbound Lenox Avenue and struck the vehicle when it moved from left to right into the bus stop. The photos annexed to the motion show the passenger side of the car abutting the left rear tire well of the bus (NYSCEF #80).

The M101 bus's video establishes that it proceeded northbound on Lenox Avenue following behind an M102 bus (NYSCEF #81). The M102 passed through the intersection at 135th Street and stopped in the bus stop on the far side. While the M101 was stopped at the red light at West 135th Street, an articulated bus made a right turn onto Lenox Avenue from West 135th Street, passed the M102 in the bus stop and continued north on Lenox. North of West 135th Street, there do not appear to be any markings for multiple lanes of driving northbound on Lenox Avenue. There is clearly a parking lane on the right and then a large driving lane to the left.

When the light turned green, the M101 crossed West 135th Street and pulled just past the M102, which was still parked in the bus stop. The M101 slowed from 7 miles per hour to 3 miles per hour and then came to a stop as an ambulette partially in the driving lane attempted to back up.

The contact between the M101 bus and the Torres vehicle is not captured by the video (NYSCEF #81). It appears that the contact occurred as the bus was almost at a standstill, because a passenger preparing to disembark appears startled and then walked to the back of the bus to see what happened. The video shows that after the contact, the M101 bus came to a complete stop in the lane for traffic. The M102 is seen in the video

through the windows and open door of the right side of the M101. The M101 passengers disembark post-accident. After some time passes, the M102 pulled out of the bus stop and drove around the front of the stopped M101. Only then do vehicles drive around the right side of the stationary M101 utilizing the parking lane.

The testimony of vehicle operator Torres is pertinent to the determination of liability, even though some of it is clearly contradicted by the video. Torres claims he waited at a red light at West 135th Street in the left northbound lane on Lenox Avenue (NYSCEF #79; P27:L12-19). The M101 [driven by Rodriguez] was in the center lane stopped on the north side of the intersection (29:4-16). When the light at West 135th Street turned green, Torres waited and then went from behind the bus with the intention of passing it on the left (30:4-13, 32:13-16). At the time, vehicles were passing the M101 on the right (32:8-12). The M101 bus was moving a little (31:4-7). Torres perceived that the M101 was trying to straighten up (31:8-12). As it moved, the back part of the bus came into his lane of travel (34: 3-17). Torres tried to avoid the impact by driving onto the center divider but he could not move around the bus (36:8-19).

Torres' own testimony establishes that the M101 operated by Rodriguez was stopped or barely moving forward north of West 135th Street when the Torres vehicle approached from behind. Although Torres claims that cars were passing the M101 from the right, parking lane, the video establishes that the M102 was stopped in the bus stop adjacent and slightly behind the M101 and no vehicles were driving around the M101 from the right prior to the accident. While credibility determinations are generally left to the trier of fact, where, as here, the testimony is physically impossible it has no evidentiary value. *Espinal v Trezechahn 1065 Avenue of the Americas*, 94 AD3d 611, 613 [1 Dept 2012]; *Loughlin v City*, 186 AD2d 176 [2 Dept.1992], *lv denied*, 81 NY2d 704 [1993].

As Torres approached the stopped or barely moving M101 from behind with the intention to pass it on the left, he had the obligation to use reasonable care to avoid a collision and maintain a safe distance (VTL § 1129[a]). "[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" (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept. 2010]).

Torres' explanation of how the accident occurred does not rebut the inference of his negligence. Even if he is correct that the rear of the articulated bus kicked out to the left as the nose moved slightly forward and to the right¹, it was his obligation as the driver of the vehicle approaching from the rear and attempting to pass on the left to maintain a safe distance and to use care to avoid a collision. The area to the left of the bus was too tight for the Torres vehicle to pass through and maintain a safe distance between the sides of the vehicles. The M101 was already present and was moving forward at a slow speed. It did not pass the Torres vehicle or even enter the area north of West 135th Street abreast of the Torres vehicle. Torres had an obligation to remain behind the bus until it was safe to pass, which he did not do.

Accordingly, the Court grants the motion of the Transit defendants for summary judgment, dismissing all claims and cross-claims against them and further removes them from the cation, which shall now read:

¹ The Court does not abandon common sense or science while evaluating claims. *Espinal v Trezechahn 1065 Avenue of the Americas*, 94 AD3d 611, 613 [1Dept. 2012]; *Loughlin v City*, 186 AD2d 176 [2 Dept.1992], *lv denied*, 81 NY2d 704 [1993]. An articulated bus moving slightly forward and to the right would not cause the rear portion to move to the left.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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MARIA JIMINEZ,

Plaintiff,

Index # _____

-against-

CHARLES TORRES and HERTZ VEHICLES LLC,

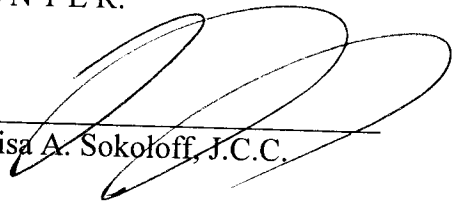
Defendant(s).

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

Dated: May 1, 2018
New York, New York

ENTER:



Lisa A. Sokoloff, J.C.C.