

Jiminez v Rodriguez
2018 NY Slip Op 33117(U)
December 3, 2018
Supreme Court, New York County
Docket Number: 153185/2015
Judge: Lisa A. Sokoloff
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA ANN SOKOLOFF

PART

IAS MOTION 21EFM

Justice

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MARIA JIMINEZ,

Plaintiff,

- v -

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

Defendant.

INDEX NO.

453185/2015

MOTION DATE

06/01/2018

MOTION SEQ. NO.

003

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 158, 159, 160, 161, 163, 164, 165, 166, 167, 168

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the motion of plaintiff Maria Jimenez to reargue this Court's May 1, 2018 decision and order granting summary judgment to the Transit Authority defendants (Omar Rodriguez, MABSTOA and NYCTA) and the cross-motion of defendant Charles Torres for the same relief, reargument is granted. Upon reargument, this court concedes that it erred in coming to its original determination; however, upon reconsideration it nonetheless adheres to its prior determination.

This action arises from a two-vehicle accident which occurred on March 13, 2015 at 8:40 p.m. on Lenox Avenue just north of West 135th Street in Manhattan when there was contact between the driver's side rear wheel well of an articulated M101 Transit bus and the front passenger's side of a white Buick sedan operated by defendant Torres in which plaintiff was a passenger.

This court noted in its May 1, 2018 decision that the bus video submitted did not capture the accident. The video system in the bus had a camera with a view out the front windshield and multiple cameras that captured the inside of the bus but no cameras that shot from the rear of the bus or were positioned to capture the space adjacent to the sides of the bus. Despite plaintiff's counsel's claim that it had not been served with a copy of the video¹, he correctly noted that this court failed to realize that a portion of the accident was captured by camera six (6) of the bus video system at time markings 19:34:24 - 19:34:28.

After review of that portion of the bus video multiple times with counsel and several more times, the court concludes that its original determination was correct, albeit that it cited to the wrong section of the Vehicle & Traffic Law. The footage as captured by camera six (6) at the aforementioned time markings confirms the court's initial assessment of the accident.

The view provided by camera six (6) reveals that the Torres vehicle, which at times had traveled to the left of the rear of the bus, was behind the bus as the bus rolled north of the intersection. The front lights of the Torres vehicle are seen coming from behind and around the rear, left side of the bus. It appears that the wheels on the driver's side of Torres vehicle mount the curb of the island that separates the traffic in opposite directions. As the front of the Torres vehicle comes off the curb of the island, there is contact between the vehicle and the bus.

Torres drove on the curb of the island to get around the rear of the bus as there was insufficient room on the roadway to pass. Torres was guilty of violating Vehicle and Traffic Law 1122 for failing to travel at a safe distance while attempting to pass/overtake the bus from the left while both vehicles were traveling in the same direction.

¹ At oral argument, plaintiff's counsel conceded that he was in possession of a copy of the video. All parties reviewed the video together in the court's chambers.

While movants are correct that the plaintiff and two drivers have conflicting testimony of how the accident occurred, that does not require a finding of a question of fact sufficient to defeat the motion. Their testimony is belied by the video which clearly demonstrates that defendant Torres was the only negligent party to the accident (*Ciraldo v County of Westchester*, 147 AD3d 813 [2nd Dept. 2017]).

Although there had been three lanes for driving and parking in each direction south of the 135th Street intersection, north of it there were only two lanes. The video clearly reveals no lane markings in the roadway for a third lane. The one noted by plaintiff's counsel is merely a brief reflection in the bus windshield.

The remainder of the movants' contentions have been considered and are unavailing. Accordingly, it is

ORDERED, that summary judgment is granted dismissing all claims and cross-claims against defendants Omar Rodriguez, NYCTA, and MABSTOA; and it is further

ORDERED that the caption shall now read:

_____X

MARIA JIMENEZ,

Plaintiff,

-against-

CHARLES TORRES, HERTZ VEHICLES, LLC,

Defendants.

_____X

And it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall mark the records to reflect this decision and the change in the caption and parties; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the change in parties and caption by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office and Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

<u>12/3/2018</u>					
DATE				LISA ANN SOKOLOFF, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☐	☒	NON-FINAL DISPOSITION
	☐	GRANTED	☐	☒	GRANTED IN PART
APPLICATION:	☐	SETTLE ORDER			OTHER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	REFERENCE
				☐	FIDUCIARY APPOINTMENT