

Baker v Rivera

2019 NY Slip Op 30518(U)

February 28, 2019

Supreme Court, New York County

Docket Number: 152839/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 21EFM

Justice

-----X INDEX NO. 152839/2016

SHARNELL BAKER,

MOTION SEQ. NO. 002

Plaintiff,

- v -

ERIC RIVERA, MV PUBLIC TRANSPORTATION INC., NEW
YORK CITY TRANSIT AUTHORITY, and JESSIKA DEPAS,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **denied**.

This is a personal injury action in which defendants Eric Rivera (“Rivera”), MV Public Transportation, Inc. (“MV Public Transportation”), and New York City Transit Authority (“NYCTA”) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint of plaintiff Sharnell Baker (“Baker”) and the cross claim of co-defendant Jessika Depas (“Depas”).

On May 29, 2015, plaintiff Baker was a passenger in an Access-A-Ride bus. (Doc. 52 at 18.) The bus was being driven by defendant Rivera (Doc. 58 at 4), who was employed as a bus driver by defendant MV Public Transportation (*id.*). MV Public Transportation is a shuttle service that provides Access-A-Ride buses. (*Id.*) A collision occurred with defendant Depas’s vehicle near the intersection of 34th Street and 7th Avenue in Manhattan. (Doc. 47 at 2.)

As a result of the accident, Baker commenced the instant negligence action against the captioned defendants on April 4, 2016. (Doc. 48 at 4.) On April 20, 2016, defendants Rivera, MV Public Transportation, and NYCTA served their answer, which contained a cross claim against co-

defendant Depas for contribution and indemnification. (Doc. 49 at 4.) On June 17, 2016, Depas filed her answer, which contained a cross-claim for contribution and indemnification from defendants Rivera, MV Public Transportation, and NYCTA. (Doc. 50 at 4.)

Defendants Rivera, MV Public Transportation, and NYCTA now move, pursuant to CPLR 3212, for summary judgment dismissing Baker's complaint and Depas's cross claim. (Doc. 46.) In support of their motion, the movants rely heavily on the depositions of Rivera and Baker. Rivera testified that he was rear-ended:

Q: Okay. After the light turned green, at some point did traffic begin to move?

A: No.

Q: Okay. After the light turned green, what happened next?

A: The light turned green, traffic didn't move, the vehicle behind me ran into the back of me.

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Q: At the time of the impact, was your vehicle moving or stopped?

A: Stopped.

Q: For how long had you been stopped continuously before the impact occurred?

A: A few seconds.

Q: When you say a few seconds, what do you mean?

A: Two or three seconds.

(Doc. 53 at 47–48.) Baker's deposition testimony further indicates that the Access-A-Ride bus was hit from the back. (Doc. 52 at 32.) However, she also testified that Rivera had made a "short stop." (*Id.* at 28.)

The movants have therefore established their prima facie case of entitlement to judgment as a matter of law. "The law is well settled that a rear-end collision with a stopped vehicle creates a presumption that the operator of the rear vehicle was negligent. Thus, the injured occupant of the front vehicle is entitled to summary judgment on liability unless the driver of the second vehicle

provides a non-negligent explanation of the collision.” (*Somers v Condlin*, 39 AD3d 289, 289 [1st Dept 2007].) Moreover, the fact that Rivera might have made a sudden stop (*see Baker Dep. Tr.* at 28) is not a basis for denying summary judgment. (*See Mitchell v Gonzalez*, 269 AD2d 250, 251 [1st Dept 2000] (“It is not a sufficient defense to claim that plaintiffs’ vehicle stopped short.”).)

Although defendant Rivera testified that he was rear-ended, this Court nonetheless denies the movants’ motion for summary judgment. At her deposition,¹ contrary to the version of events given by Rivera, defendant Depas² testified that her vehicle was stopped (Depas Dep. Tr. at 51) and that her vehicle was actually side-swiped by the back of the Access-A-Ride bus. (*Id.* at 53–54.) “[The] contradictory versions of events . . . raise an issue of fact, thereby requiring denial of the summary judgment motion.” (*Edwards v New York City Tr. Auth.*, 37 AD3d 157, 159 [1st Dept 2007].)

In accordance with the foregoing, it is hereby:

ORDERED that defendants Eric Rivera, MV Public Transportation, Inc., and New York City Transit Authority’s motion for summary judgment is denied; and it is further

¹ Plaintiff represents that she mailed the transcripts of Rivera’s and Depas’s depositions to their respective attorneys in November of 2017 with a letter requesting that they be executed by the witnesses. (Doc. 58 at 2.) She also states that the transcripts were never returned. However, pursuant to CPLR 3116(a), “[i]f the witness fails to sign and return the deposition . . . it may be used as fully as though signed.”

² This Court notes that counsel for Depas have filed a notice of motion. (Doc. 60.) However, the relief requested is simply that the summary judgment motion should be denied. (*Id.*) Thus, this Court finds that Depas did not file her own motion, but instead filed opposition papers to the movants’ motion.

ORDERED that the movants' counsel is to serve a copy of this order, with notice of entry, on all parties and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within 30 days after the entry of this order onto NYSCEF; and it is further

ORDERED that this constitutes the decision and order of this Court.

2/28/2019

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE