

Vong Lee v Oriolo

2019 NY Slip Op 30644(U)

March 18, 2019

Supreme Court, New York County

Docket Number: 157856/2016

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART IAS MOTION 22

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| VONG LEE, | INDEX NO. <u>157856/2016</u> |
| Plaintiff, | MOTION DATE <u>01/23/2019</u> |
| - v - | MOTION SEQ. NO. <u>001</u> |
| JUSTEN ORIOLO, NEW JERSEY TRANSIT CORPORATION, PAUL SERVANT, DENNY BUS LINES, LTD | |
| Defendant. | |

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49

were read on this motion to/for

JUDGMENT - SUMMARY

Before the Court is plaintiff Vong Lee's motion and defendants for summary judgment in favor of plaintiff on the issue of liability against defendants Justen Oriolo and New Jersey Transit Corporation ("NJ Transit") (collectively "Defendants"). Defendants Paul Hubert Servant and Denny Bus Lines, LTD (collectively "Co-defendants") cross-move for the same relief as plaintiff against Defendants. Defendants oppose the motions.

This action stems from a motor vehicle incident which occurred on June 10, 2015, in the Lincoln Tunnel in the City, County and State of New York, when a bus owned by defendant NJ Transit and operated by defendant Justen Oriolo struck another bus owned by defendant Denny Bus Lines, LTD and operated by defendant Paul Hubert Servant in the rear and led to the alleged serious injury of plaintiff who was a passenger of Defendants' vehicle.

Plaintiff's motion for summary judgment on the issue of liability is granted. The motion, which alleges that the Defendants' bus rear-ended defendant Co-defendants' vehicle, has made a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact

(See *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; see also *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). “[A] rear-end collision with a stopped ... vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident” (*Cruz v Lise*, 123 AD3d 514 [1st Dep’t 2014] [internal quotations omitted]).

Summary Judgment in favor of the plaintiff is warranted where the defendant’s own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). “It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles” (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]). Here, plaintiff was passenger of a bus that rear-ended another motor vehicle. Thus, plaintiff has made a prima facie showing of entitlement to summary judgment on this issue of liability as against Defendants.

In opposition Defendants fail to raise an issue of fact or provide a non-negligent explanation for the collision. Defendants simply argue that their vehicle was at a distance from Co-defendants vehicle and allege that Co-defendants are comparatively negligent for the accident at issue. The Court finds that the motion is appropriate regardless of any possible comparative negligence by Co-defendants. Thus, plaintiff is free from any liability, and absent any issue of fact, plaintiff’s motion for summary judgment on the issue of liability in plaintiff’s favor as against Defendants is granted.

Co-defendants’ cross-motion for an Order pursuant to CPLR §2215 and §3212 to dismiss plaintiff’s Complaint and any cross-claims of Defendants as against Co-defendants is granted.

As noted above, it has been demonstrated that Defendants' vehicle rear-ended Co-defendants' vehicle. Co-defendants point to the deposition of defendant driver Justen Oriolo who testified that he rear-ended Co-defendants' vehicle (Mot, Exh E at 30). Co-defendants attach the deposition of co-defendant Paul Hubert Servant who testified that he began to stop when Co-defendants' vehicle was impacted from behind (Aff in Op, Exh E at 14-15). Thus, Co-defendants have satisfied their burden and Defendants in opposition have failed to raise an issue of fact or non-negligent excuse for the accident. Co-defendants' cross-motion to dismiss plaintiff's complaint and any cross-claims against Co-defendants is granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment for a finding that plaintiff is free from liability and that defendants Justen Oriolo and New Jersey Transit Corporation are liable for the accident at issue is granted; and it is further

ORDERED that defendants Paul Hubert Servant and Denny Bus Lines, LTD's cross-motion for an order dismissing plaintiff's Complaint and any cross-claims of defendants Justen Oriolo and New Jersey Transit Corporation is granted; and it is further

ORDERED that the Complaint is dismissed in its entirety as against defendants Paul Hubert Servant and Denny Bus Lines, LTD, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants Chasqui Corp. and Angel Castillo; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendants Paul Hubert Servant and Denny Bus Lines, LTD serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that within 20 days of entry, counsel for defendants Paul Hubert Servant and Denny Bus Lines, LTD shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



3/18/2019
DATE

ADAM SILVERA, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | REFERENCE |