

Butler v New York City Tr. Auth.
2019 NY Slip Op 31441(U)
May 22, 2019
Supreme Court, New York County
Docket Number: 156723/2016
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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 2EFM

Justice

-----X

PATRICIA BUTLER,

Plaintiff,

- v -

THE NEW YORK CITY TRANSIT AUTHORITY, EMPIRE
PARATRANSIT, JACK KENVILLE, SONYA RAYSON, and
ABIGAIL RAYSON,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57
were read on this motion to/for

JUDGMENT - SUMMARY

DECISION AND ORDER

In this personal injury action arising from a motor vehicle accident, plaintiff Patricia Butler
moves, pursuant to CPLR 3212, for summary judgment against remaining defendants Sonya
Rayson and Abigail C. Bacchus. After a review of the motion papers, as well as the relevant
statutes and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL BACKGROUND:

This action arises from a motor vehicle accident on May 2, 2016. On that date, plaintiff
Patricia Butler, a passenger in an Access-A-Ride bus (the bus), was injured when another vehicle,
owned by defendant Sonya Rayson (Rayson) and driven by defendant Abigail Bacchus (Bacchus),
went through a stop sign at a high rate of speed and broadsided the bus. The bus was leased by

1 NYCTA, Empire and Kenville, previously moved, and were granted, summary judgment dismissing all claims and
cross claims against them. Docs No. 52, 53.

defendant New York City Transit Authority (NYCTA) to defendant Empire Paratransit (Empire) and was operated by defendant Jack Kenville (Kenville).

Plaintiff commenced the captioned action by filing a summons and verified complaint on August 11, 2016. Doc. 44. Rayson and Bacchus joined issue by service of their verified answer filed October 7, 2016, in which they denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and asserted cross claims against NYCTA, Empire and Kenville for contribution and common law indemnification. Doc. 46. NYCTA, Empire and Kenville joined issue by their verified answer filed December 1, 2016. Doc. 45.

Plaintiff appeared for a 50-h hearing on July 20, 2016. Doc. 47. At the hearing, plaintiff testified that she was involved in a motor vehicle accident on May 2, 2016 at the intersection of Kings Highway and 82nd Street in Brooklyn. Doc. 47 at 34. When the accident occurred, plaintiff was a passenger in the bus and it was a clear, sunny day. Doc. 47 at 34-35. The bus was bringing plaintiff home from an eye doctor appointment. Doc. 47 at 43, 48. Plaintiff was accompanied by an aide. Doc. 47 at 39. Plaintiff sat on the right side of the bus and the aide sat on the left side, behind the driver. Doc. 47 at 45-46.

The accident occurred approximately 10 minutes after the bus picked up plaintiff and her aide. Doc. 47 at 50. During those 10 minutes, the driver of the bus drove safely. Doc. 47 at 50-51, 54-55. Plaintiff recalled that the bus travelled in the middle lane on Kings Highway, a two-way road with three lanes in each direction, and that traffic was moving slowly. Doc. 47 at 51-53. As the bus reached 82nd Street, with Foster Avenue the next street ahead, she saw a black car traveling on 82nd Street go through a stop sign traveling "too fast" and drive into the intersection, where it "T-bone[d]" the bus with a heavy impact. Doc. 47 at 55-62.

At her deposition on April 19, 2018, plaintiff substantially reiterated the testimony which she gave at the 50-h hearing. Doc. 48. She added that the driver of the bus, which was marked “Empire Paratransit”, was attempting to change from the center lane to the left lane when the impact occurred. Doc. 48 at 27-30, 33, 43-44. Again, plaintiff testified that a black car drove “very fast” through a stop sign on 82nd Street and drove into the passenger (right) side of the bus, which was travelling on Kings Highway. Doc. 48 at 34-36, 40, 45, 98. Contrary to her 50-h testimony, plaintiff believed that Kings Highway was a one-way road. Doc. 48 at 98. Plaintiff did not know the compass direction in which the bus was travelling, whether the driver of the bus saw the car coming down 82nd Street before the impact, or whether there was anything the driver could have done to prevent the collision. Doc. 48 at 36, 98. However, she recalled that there was no traffic signal on Kings Highway in the direction the bus was driving. Doc. 48 at 100-101. She further stated that the black car which went through the stop sign “T-bone[d]” the bus with a heavy impact. Doc. 48 at 37-38. The bus did not come into contact with any vehicle other than the black car. Doc. 48 at 100. It is undisputed that the “black car” about which plaintiff testified was a 2014 Nissan bearing New York State license plate number HFT3081 for the year 2016, was owned by Rayson, and was driven by Bacchus.

LEGAL CONCLUSIONS:

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. *See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The movant must produce sufficient evidence to eliminate any issues of material fact. *Id.* If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary

facts in admissible form which raise a genuine, triable issue of fact. *See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006).

Plaintiff has established her prima facie entitlement to summary judgment as a matter of law by submitting her deposition testimony² establishing that she was injured in an intersection collision between the bus, which was travelling on Kings Highway, a road which did not have a traffic signal affecting the movement of the bus at that intersection, and that the car owned by Rayson and driven by Bacchus went through a stop sign on 82nd Street at a high rate of speed and entered the intersection. It was established in this Court's Order signed March 19, 2019, that the bus driven by Kenville had the right-of-way (*see* Vehicle and Traffic Law § 1142) and that Kenville was "entitled to anticipate that other vehicles would obey the traffic laws that require them to yield." *Martinez v Cofer*, 128 AD3d 421, 422 (1st Dept 2015) (citations omitted). Additionally, "[a] 'presumption of negligence arises from the failure of a driver at a stop sign 'to yield the right of way' to the vehicle on the highway.'" *Martinez*, 128 AD3d at 422 (citation omitted). Additionally, this Court notes that defendants Rayson and Bacchus, failed to oppose both the previous motion and the instant motion, thereby failing to raise any issues of fact. Plaintiff further urges that Rayson and Baccus should be estopped or precluded from contesting liability based on the holdings of the Court's previous order. However, based on this Court's findings herein, it is unnecessary to consider those arguments.

Therefore, in light of the foregoing, it is hereby:

²Although not annexed as an exhibit to the instant motion, this Court has also taken judicial notice of plaintiff's 50-h hearing testimony, which was submitted by NYCTA, Empire and Kenville in support of their motion for summary judgment (mot. seq. 002) and which, as noted previously, was substantially identical to that given by plaintiff at her deposition. *Matter of Part 60 RMBS Put-Back Litig.*, 155 AD3d 482 (1st Dept 2017).

ORDERED that the motion for summary judgment by plaintiff Patricia Butler against defendants Sonya L. Rayson and Abigail C. Bacchus is granted to the extent that summary Judgment is awarded on liability and the matter is referred to a Judicial Hearing Officer to a and determine the amount of damages she is entitled to; and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry on defendants within 20 days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may [*10] seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and it is further

ORDERED that this constitutes the Decision and Order of the Court.

5/22/2019
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