

**Sukalic v Bhalli**

2019 NY Slip Op 32540(U)

July 2, 2019

Supreme Court, Richmond County

Docket Number: 152701/2018

Judge: Thomas P. Aliotta

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND: TR-2

-----X  
ZAIM SUKALIC,

Plaintiff,

**DECISION AND ORDER**

-against-

Index No. 152701/2018

MUHAMMMAD BHALLI, NEW YORK CITY  
TRANSIT AUTHORITY, and ERIC PARENTE,

Motion Nos. 709 – 001  
710 – 002

Defendants.  
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The following papers numbered “1” through “3” were marked fully submitted on the 1<sup>st</sup>  
day of May 2019:

	Pages Numbered
Notice of Motion for Summary Judgment by Defendants NEW YORK CITY TRANSIT AUTHORITY and ERIC PARENTE, With Supporting Papers, Exhibits (dated February 7, 2019) .....	1
Notice of Motion to Strike by Defendant METROPOLITAN TRANSPORTATION AUTHORITY With Supporting Papers, Exhibit (dated February 9, 2019) .....	2
Affirmation in Opposition by Plaintiff ZAIM SUKALIC With Supporting Papers, Exhibits (dated March 27, 2019) .....	3

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Upon the foregoing papers, the motion (No. 709 – 001) by defendants NEW YORK  
CITY TRANSIT AUTHORITY and ERIC PARENTE is denied with leave to renew upon the  
completion of discovery. The motion (No. 710 – 002) by defendant METROPOLITAN  
TRANSPORTATION AUTHORITY to strike plaintiff’s supplemental summons and amended  
verified complaint is granted.

Plaintiff ZAIM SUKALIK (hereinafter “plaintiff”) commenced this action to recover damages for injuries sustained when a New York City bus he was riding on as a passenger was allegedly struck in the rear by a vehicle driven by defendant MUHAMMAD BHALLI (hereinafter “BHALLI”). Defendant ERIC PARENTE (hereinafter “PARENTE”) was operating the bus in the course of his employment with the defendant NEW YORK CITY TRANSIT AUTHORITY (“hereinafter NYCTA”). According to the papers submitted to the Court, PARENTE was driving the subject bus on Hylan Boulevard in Staten Island, and observed a red light as he was approaching Reid Avenue. He began to apply the brakes and gradually slow down the bus when he felt a moderate to heavy impact to the rear of the bus. The impact caused plaintiff to fall into the front dashboard of the bus and he allegedly sustained serious injuries.

In the current application, defendants NYCTA and PARENTE (collectively “movants”) seek summary judgment dismissing the complaint and all cross claims against them and contend that proof establishes that the subject bus was slowing down and preparing to stop at a red light when it was rear-ended by the BHALLI vehicle, and that the subject rear-end collision created a *prima facie* case of liability against the BHALLI vehicle. In support, movants submit an affidavit by the bus driver (PARENTE) who stated that he was traveling on Hylan Boulevard and approaching Reid Avenue, when he observed a red traffic signal ahead and began to apply his brakes, gradually bringing the bus to a stop when the bus was rear-ended by the BHALLI vehicle traveling behind the bus. PARENTE also stated that the plaintiff was standing on the bus behind him for at least ten minutes before said collision, even though there were seats available for him to sit. Accordingly, PARENTE did nothing to cause plaintiff to fall following the collision.

In addition, movants submit a copy of a videotape taken by a security camera installed inside the bus, which confirms that plaintiff was standing on the bus at the time of impact. Also,

movants claim that the video confirms the sequence of events leading up to the time of impact, *i.e.*, the red light and the slowing of the bus. Movants also submit an affidavit by John Paul Laquindanum, a video data manager employed by Integrated Video Solution, which contracted with the NYCTA for the installation and recording of security videos inside New York City buses. Mr. Laquindanum stated that he maintains, searches and retrieves video files for the company, and that the subject videotape was retrieved and maintained from the subject bus on the date and time of the accident. Movants maintain that collectively, this proof establishes that the subject bus was rear-ended by a moving vehicle operated by BHALLI, that PARENTE was not negligent in the operation of the City bus, and that there are no genuine issues to be resolved regarding its liability allegedly arising from the subject collision.

In opposition, plaintiff contends that the motion must be denied since there are triable issues of fact as to whether movants violated Vehicle and Traffic Law § 1128 (a) by driving the bus in more than one lane of traffic at the time of the collision. According to plaintiff, a videotaped recording taken inside the bus indicates that the bus was straddling two lanes at the time of impact (the bus lane and the lane immediately to the left of the bus), thereby establishing a clear violation of VTL § 1128 (a), regardless of BHALLI's negligence.

In addition, plaintiff contends that triable issues of fact have been raised as the bus operator PARENTE made an "admission against interest" as documented in the narrative portion of the police report made following the subject collision. Plaintiff contends that the police arrived at the scene of the accident and spoke with the drivers of both vehicles and issued conflicting information within the police accident report regarding the events leading up to the collision. Accordingly, issues of fact exist regarding the cause of the subject accident.

Plaintiff further contends that the videotape offered by defendants was not authenticated properly since the affiant was neither the operator, installer or maintainer of the equipment used to videotape the occurrence. In addition, plaintiff argues that the affidavit submitted by Mr. Laquindanum was not properly notarized and is therefore insufficient to authenticate the subject videotape. Plaintiff also contends that there has been no evidentiary showing that the vehicle in question was bus number 816S, and that the date of the requested material is different from the date of the accident. Plaintiff argues that the foregoing raises triable issues, which prevents an award of summary judgment at this juncture in favor of defendants.

Finally, plaintiff argues that defendants' motion for summary judgment is premature given the fact that no depositions have been held yet. Plaintiff argues that the conflicting information from each of the drivers contained within the police report suggests that the deposition of each driver may lead to relevant evidence regarding the happening of the accident. Accordingly, plaintiff argues that summary judgment must be denied.

These same defendants move for an order pursuant to CPLR 3025 to strike plaintiff's supplemental summons and amended verified complaint and precluding plaintiff from filing suit against the MTA on the ground that plaintiff served the said supplemental summons and complaint well beyond the period within which an amended pleading may be served as of right, without first obtaining leave of court. In addition, defendants argue that the MTA is not a proper party to the action and is not liable for the torts committed by one of its subsidiaries since its function is merely one of financing and planning, and it is not involved in the operation, maintenance and control of any part of transportation facility.

It is well settled that summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of triable issues of fact (*see Alvarez v. Prospect*

Hosp., 68 NY2d 320, 324 [1986]; Herrin v. Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept. 2003]). The party moving for summary judgment has the initial burden of establishing its right to judgment as a matter of law (*see* Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985], and, in this regard, “the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference” (Cortale v. Education Testing Serv., 251 AD2d 528, 531 [2d Dept. 1998])). Nevertheless, upon a *prima facie* showing by the moving party, it is incumbent upon the party opposing the motion to produce “evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial” (Alvarez v. Prospect Hosp., 68 NY2d at 324).

More particular to this case, it is well settled that a rear-end collision with a stopped vehicle establishes a *prima facie* case of negligence on the part of the operator of the moving vehicle and imposes a duty of explanation upon that operator to rebut the inference of negligence created by the happenstance of the collision (*see* Leal v. Wolff, 224 AD2d 392 [2d Dept. 1996]).

Here, in the opinion of this Court, plaintiff has raised triable issues regarding the facts surrounding the happening of the accident, particularly through conflicting information contained within two police reports relating to the subject accident regarding which driver collided with which vehicle. Moreover, should the Court consider Laquindanum’s unsworn affidavit, discrepancies are raised regarding the date of the subject accident and the proper video tape. In addition, the affidavit raises questions regarding whether the bus was straddling two lanes immediately prior to the collision. Accordingly, an award of summary judgment prior to the completion of depositions of the parties would be premature (*see* CPLR 3212[f]; Rengifo v. City of New York, 7 AD3d 773 [2d Dept. 2004]).

Finally, the unopposed motion by the MTA is granted since the supplemental summons and amended verified complaint are untimely and issued without proper leave of court (*see* CPLR 3025 [a]; Nikolic v. Fed. Empl. & Guid. Serv., Inc., 18 AD3d 522, 524 [2d Dept. 2005]).

Accordingly, it is hereby:

ORDERED that the motion (No. 001) by defendants NEW YORK CITY TRANSIT AUTHORITY and ERIC PARENTE, is denied with leave to renew upon the completion of discovery; and it is further

ORDERED that the motion (No. 002) by METROPOLITAN TRANSPORTATION AUTHORITY to strike the supplemental summons and amended verified complaint is granted.

This constitutes the decision and Order of this Court.

ENTER,



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HON. THOMAS P. ALIOTTA, J.S.C.

DATED: July 2, 2019