

James v New York City Tr. Auth.

2019 NY Slip Op 33451(U)

November 21, 2019

Supreme Court, New York County

Docket Number: 451894/2017

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
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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GEORGE JAMES,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, EMPIRE
PARATRANSIT CORP, JOEL DORLETTE, JUNEL AHMED

Defendant.

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INDEX NO. 451894/2017
MOTION DATE 07/26/2019
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is ORDERED that defendants Joel Dorlette, Empire Paratransit Corp. and New York City Transit Authority’s (hereinafter “Transit Defendants”) motion for summary judgment, pursuant to CPLR 3212, on the issue of liability in favor of said defendants and as against Co-Defendant Junel Ahmed, and to dismiss plaintiff’s Complaint, as well as any and all cross-claims on the grounds that there are no triable issues of fact with respect to the liability aspect of the action is granted.

The suit at bar stems from a motor vehicle accident which occurred on April 4, 2016, at the intersection of Park Avenue and East 36th Street in the County, City, and State of New York, when plaintiff was a passenger in the Transit Defendants’ vehicle when it was rear-ended by a vehicle operated by Co-defendant Ahmed.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64

NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Here, the Transit Defendants allege that their vehicle was rear-ended by defendant Ahmed’s vehicle and as such that there is no question of fact regarding the Transit Defendants’ liability in this case. In support of their motion Transit Defendants attach the deposition of plaintiff, the deposition of defendant Joel Dorlette who operated the Transit Defendants’ vehicle, and the deposition of Co-defendant Ahmed (Mot, Exh I, J, K). Plaintiff, defendant Dorlette, and Co-defendant all testified that Co-defendant’s vehicle stuck the Transit Defendants’ vehicle (*id.*). Co-defendant testified that the front right bumper of his vehicle came into contact with the right rear bumper of the Transit Defendants’ vehicle (Mot, Exh K at 11). The Transit Defendants have made a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to defendant Gilbert.


In opposition, plaintiff and Co-defendant fail to raise an issue of fact. Plaintiff and Co-defendant’s opposition hinges on the theory that the Transit Defendants’ vehicle’s brake lights were not working at the time of the incident. However, the Court notes that the law is clear that a claim that the vehicle in front of the rear-ending vehicle did not have functioning brake lights does not adequately rebut the inference of the rear-ending vehicle’s negligence (*Farrington v*

and it is further;

ORDERED that within 30 days of entry, counsel for the Transit Defendants serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

11/21/19
DATE


ADAM SILVERA, J.S.C.

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