SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

----------X

Muller St-Cyr, Jr.

Petitioner,

-against-

The New York City Transit Authority, New York City Transit Authority Division of Paratransit, MTA Bus Company, Metropolitan Transportation Authority, Maggies Paratransit Corp. and Sasha Jacquelyn Barclift,

Respondents.

----------X

DECISION AND ORDER

Index No.: 451113/2016

Mot Seq: 2

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Paper	Numbered	NYCEF #
Defendant's Motion/ Affirmation/Memo of Law	1	73-84
Plaintiff's Cross-Motion & Opposition/Affirmation	2	85-97
Defendant's Affirmation in Opposition to Cross-Motion	3	99-101
Defendant's Affirmation in Reply	4	102-104
Plaintiff's Further Support of Cross-Motion & Further Opposition/Affirmation	5	105

LISA A. SOKOLOFF, J.

In this personal injury action in which Plaintiff St-Cyr Muller alleges injury from a car collision, Defendants New York City Transit Authority (NYCTA), New York City Transit Authority s/h/a New York City Transit Authority Division of Paratransit, MTA Bus Company, Metropolitan Transit Authority (MTA), Maggies Paratransit Corp (Maggies), a Paratransit Provider under the Access-A-Ride Program of NYCTA and Sasha Jacquelyn Barclift, the operator of the Access-A-Ride van, move for summary judgment and to dismiss the complaint. Plaintiff cross-moves for summary judgment on the issue of liability and to amend the Bill of Particulars to include New York State Vehicle and Traffic Law (VTL) § 1160.

Plaintiff alleges that on May 22, 2015, both his vehicle and Defendant's Access-A-Ride van, to his left, were stopped at a red traffic light on Classon Avenue at the intersection of Lafayette Avenue in Brooklyn. There were no vehicles stopped in front of them. As the light turned green, Defendant's Access-A-Ride van proceeded to turn right onto Lafayette Avenue and collided with the front driver's side of Plaintiff's vehicle.

In support of their motion, Defendants contend that contrary to Plaintiff's assertion that there were two moving lanes of traffic, there was only one and that by traveling in a bus stop, Plaintiff violated VTL §§1110, 1128 and 1202. Further, Defendants argue that by attempting to pass the Access-A-Ride van from the bus lane while the van operator, Barclift, had no indication that Plaintiff intended to travel straight through the intersection, Plaintiff violated VTL §1123. In addition, Defendants contend that Barclift's actions were justified under the Emergency Doctrine as her van had the right of way to turn at the intersection and her actions were reasonable and prudent given the emergency situation she was faced with when the van was unexpectedly hit by Plaintiff's vehicle from the bus lane.

Finally, Defendants contend, and Plaintiff does not dispute, that MTA Bus Company and MTA are not proper parties to the action as they have denied any ownership or connection with the driver and have no tort responsibility for NYCTA's Access-A-Ride Program. Defendants admitted that the vehicle driven by Ms. Barclift was owned by NYCTA and that Barclift was driving in the course of her employment with the permission and consent of Maggies.

In support of their motion, Defendants rely on the respective testimony of the parties and photographs of the accident location. According to his statutory and deposition testimony, when Plaintiff reached the red light and stopped, the Access-A-Ride van was already stopped in its lane of traffic. Plaintiff testified that he was in the "middle" lane and the Access-A-Ride van was to his left. He could not recall if, to his right, there was a lane or a curb. Nor could Plaintiff recall if there was a bus stop at the corner of Classon and

Lafayette or if he was driving in the lane where a bus would have stopped if there was a bus stop at the light. When shown photographs taken at the scene of the accident, Plaintiff's recollection was not refreshed that there was a bus stop at the corner of the intersection, and he could not recall if there were one or two lanes of moving traffic.

While waiting at the light, there were no vehicles in front of him in his lane of travel. When the light turned green, Plaintiff stated that the Access-A-Ride vehicle made a right "directly into the left-hand bumper driver's side" of his vehicle. He did not honk his horn before the accident occurred.

According to the deposition testimony of Defendant Barclift, she was traveling down Classon Avenue, a one-way street with one lane of moving traffic and parking on both sides. She saw the light at the intersection with Lafayette turn yellow and she brought her vehicle to a stop. Barclift was the first stopped vehicle at the light and had her right-turn signal on. According to her testimony, there was a bus stop at the corner by the light. While waiting for the light to change, Barclift observed Plaintiff's black Dodge Charger, to her right, with the front of his vehicle by the rear wheel of her van.

As the light turned green, a crossing guard motioned to the Access-A-Ride van to proceed. Barclift waited two seconds, checking in front and each side, before starting her right turn onto Lafayette, when she felt the impact of the collision on the passenger side of her van. Plaintiff's vehicle struck the rear passenger door of the Access-A-Ride van near the wheel well.

Defendants argue that Plaintiff's testimony put him in the bus lane and thus Plaintiff violated VTL §§1110, 1128 and 1202. Further, Defendants argue that Plaintiff violated VTL §1123(b) by attempting to pass Defendant from the bus lane. Plaintiff's violation of traffic laws constitutes negligence and was a substantial factor in causing the accident entitling Defendants to summary judgment.

A violation of traffic law, absent an excuse, constitutes negligence as a matter of law (*Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]). Under VTL § 1123(b), the driver of a vehicle may overtake and pass another vehicle on the right only when such movement can be safely executed, except under certain conditions, none of which are present here (*Mack v Harley*, 165 AD3d 641 [2nd Dept 2018]). Here, the photograph of the scene of the accident makes clear that there was only one lane for moving traffic and a bus sign is visible at the corner. By contrast, the photographs submitted by Plaintiff pre-date the accident and do not show enough of the scene to indicate whether the bus stop existed at those points in time as signs for the bus lane cannot be seen. Neither party disputes that Plaintiff's vehicle was to the right of the Access-A-Ride van. The clear implication is that Plaintiff improperly attempted to pass Defendant's Access-A-Ride van on the right.

In opposition to Defendants' *prima facie* showing of entitlement to judgment as a matter of law, Plaintiff submits a photograph from Google Maps "street view" of Classon Avenue illustrating a street that is wide enough to accommodate two cars driving next to each other, without either vehicle being in the bus lane. Defendants argue correctly that the photograph, delineated with two driving lanes, must be disregarded as inadmissible, and clearly does not reflect the pavement markings that existed on the date of the accident. No evidence was provided to establish that the photographs accurately depict the scene at the time of the accident (*Stadler v Lord & Taylor LLC*, 165 AD3d 500 [1st Dept 2018]) and, thus, Plaintiff has failed to raise an issue of fact sufficient to defeat to defeat Defendants' summary judgment motion (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Plaintiff seeks to amend the bill of particulars to include a claim against Defendants for a violation of VTL §1160 which requires that a right turn be made as close as practicable to the right hand curb or edge of the roadway. Leave to amend a bill of particulars may properly be granted, even after the note of issue has been filed, where the

plaintiff makes a showing of merit, the amendment includes no new factual allegations, raises no new theories of liability, and causes no prejudice to the defendant (*Flynn v 835 6th Ave. Master L.P.*, 107 AD3d 614 [1st Dept 2013]). Though Plaintiff makes no new factual allegations, and Defendants may not be prejudiced by this new theory of negligence, Plaintiff makes no showing of merit. Rather, Plaintiff advances a spurious claim against Defendants given that the Access-A-Ride van was properly in the single lane of moving traffic when it sought to make the right turn while Plaintiff's vehicle occupied the lane closest to the right-hand curb.

Accordingly, it is

ORDERED, that Defendants' motion for summary judgment is granted; and it is further

ORDERED, that Plaintiff's cross-motion for summary judgment on the issue of liability, and to amend the Bill of Particulars to include New York State Vehicle and Traffic Law (VTL) § 1160, is denied.

Dated: December 24, 2019
New York, New York

ENTER:

Lisa A. Sokoloff, J.C.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**