

Mini v MTA Bus Co.

2019 NY Slip Op 34962(U)

August 23, 2019

Supreme Court, Queens County

Docket Number: Index No. 703256/17

Judge: Robert I. Caloras

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS PART 36
Justice

-----X
ROSARIO MINI,

Plaintiff,

-against-

Index No. 703256/17
Motion Date: 7/11/19
Motion Cal. No. 21
Seq. No. 2

MTA BUS COMPANY, CITY OF NEW YORK,
METROPOLITAN TRANSPORTATION
AUTHORITY, MTA ZEREGA MAINTENANCE
and TRAINING FACILITY, RONALD ROSALLE,
RADE KONSTANTIN and A&T AUTO SALES
OF PA,

FILED
SEP 10 2019
COUNTY CLERK
QUEENS COUNTY

Defendants.

-----X

The following papers numbered E31-E44 read on this motion by defendants Rade Konstantin and A & T Auto Sales of PA ("A & T") for an order pursuant to CPLR 3212, in that no triable issues of fact exist and/or dismissing all cross claims pursuant to CPLR 3211(a)(7) in that the cross-claims fail to state a cause of action as against said defendants.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affirmation-Exhibits.....	E31-E41
Affirmation in Opposition-Affirmation-Exhibits.....	E42-E43
Reply Affirmation.....	E44

Upon the foregoing papers, it is ordered that the A & T defendants' motion is determined as follows:

In the Complaint, the plaintiff alleges that she sustained injuries as a result of a three car motor vehicle accident. On February 12, 2019, plaintiff and the A & T defendants executed a Stipulation of Discontinuance, whereby plaintiff discontinued the action as to said defendants with prejudice.

In the first branch of the motion, the A & T defendants move for summary judgment dismissing all cross-claims asserted by defendants MTA Bus Company, City of New York, Metropolitan Transportation Authority, and Ronald Rosalle ("MTA") asserted against them.

The A & T defendants have submitted, among other things, the following: plaintiff's 50-H transcript; plaintiff's deposition transcript; defendant Roselle's deposition transcript; defendant Konstantin's deposition transcript; and the police report. The A & T defendants argue that they are entitled to summary judgment on the cross-claims as a matter of law, and that there are no triable issues of fact with respect to negligence in the happening of the subject accident. The A & T defendants claim that defendant Rosalle did not stop his vehicle in time to avoid striking the rear of the A & T defendants' vehicle, which was forced forward into the rear of plaintiff's vehicle.

At his deposition, plaintiff testified that he brought his vehicle to a complete stop at the red light, on Myrtle Avenue at its intersection with 79th Avenue in Queens County, for a minute or so when his vehicle was hit in the rear. Plaintiff testified that just prior to being impacted he heard a "boom". Plaintiff testified that he saw the A & T defendants' vehicle in his rear-view mirror behind him, when he was stopped at the light before the impact. Plaintiff testified that the A & T defendants' vehicle was also stopped.

At his deposition, defendant Konstantin testified that the traffic light for Myrtle Avenue and 79th Street was red when he first saw it, about a block away. Defendant Konstantin testified that he gradually slowed his vehicle, and came to a full stop 4-5 feet behind the plaintiff's vehicle. Defendant Konstantin testified that he was stopped for about 15-20 seconds, when the bus rear ended his car and pushed him into the rear of plaintiff's vehicle. He heard no horns or brakes screeching before the impact. He described the impact as heavy and the impact to the plaintiff's vehicle as heavy as well. He also testified that the light was still red when he was rear-ended.

At his deposition, defendant Rosalle testified that just prior to the accident the light was green at the intersection. Defendant Rosalle testified that the A & T defendants' vehicle made a sudden stop in front of his vehicle, and that his vehicle slid and/or skidded into the rear of the A & T defendants' vehicle.

Based upon the foregoing, the A & T defendants argue that defendant Rosalle failed to maintain a safe enough distance to enable him to safely bring his vehicle to a stop without colliding with the rear of the A & T defendants' vehicle, which was at a complete stop at a red light. As such, the A & T defendants argues that they are entitled to summary judgment, and that the cross-claims asserted by the MTA defendants against them should be dismissed.

In opposition, the MTA defendants argue that the A & T defendants' request for summary judgment should be denied, because issues of fact exist regarding whether defendant Konstantin was negligent, and whether his actions were the proximate cause of the

accident. At his deposition, defendant Rosalle testified that his traffic light was green when he applied his brake, and his traffic light was still green when his bus made contact with the rear of the A & T defendants' vehicle. He also testified that traffic began to move when his traffic light said "go," and that the vehicle in front of him (defendant Konstantin's vehicle) stopped suddenly. Defendant Rosalle also testified that he applied his brake, but his bus slid into the rear of defendant Konstantin's vehicle. Defendant Rosalle further testified that traffic was moving slowly, and he did not have to step on the accelerator to move the bus, but just released his foot from the brakes and the bus began to roll when defendant Konstantin's vehicle suddenly stopped in front of him for an unknown reason. Defendant Rosalle also testified that he did not know why defendant Konstantin's vehicle suddenly stopped short.

Based upon Mr. Rosalle's testimony, the MTA defendants argue that defendant Rosalle's deposition testimony establishes that issues of fact exist as to whether the defendant Konstantin was negligent, and whether defendant Konstantin's actions were a proximate cause of the accident. The MTA defendants also argue that the fact that the defendant Konstantin rear-ended the plaintiff's vehicle creates issues of fact as to whether the defendant Konstantin himself failed to maintain a safe distance behind the plaintiff's vehicle.

On a motion for summary judgment, the moving parties must establish their defenses sufficiently to warrant a court awarding judgment in their favor as a matter of law (Frank Corp. v Federal Ins. Co., 70 NY2d 966 [1988]). The opposing party must then produce sufficient evidentiary proof in admissible form to raise a triable issue of fact warranting a trial (*Id.*). It is the court's burden to determine whether a triable issue of fact exists (Barr v County of Albany, 50 NY2d 247 [1981]).

"The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway" (Vehicle and Traffic Law § 1129[a]; see Napolitano v Galletta, 85 AD3d 881, 882 [2d dept. 2011]). A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that the operator come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence (see Tutrani v County of Suffolk, 10 NY3d 906, 908 [2008]; Cruz v Finney, 148 AD3d 772 [2d Dept. 2017]; Drakh v Levin, 123 AD3d 1084, 1085 [2d Dept. 2014]). Once the operator of the offending vehicle offers a non-negligent explanation, his or her adversary has the burden of raising a triable issue of fact as to whether the operator was negligent in failing to avoid the collision (see, Keenan v Ravit, 262 AD2d 366).

Here, the Court finds that plaintiff's and defendant Konstantin's testimony are

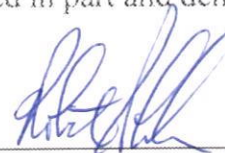
sufficient to establish that the A & T defendants' vehicle was stopped for a significant period of time, when it was struck in the rear by the MTA defendants' vehicle (Cacace v. DiStefano, 276 AD2d 457 [2d Dept 2000]). Consequently, the A & T defendants sustained their burden of showing *prima facie* their entitlement to summary judgment, thus shifting the burden to the MTA defendants to raise a triable issue of fact (CPLR 3212[b], Zuckerman v City of New York, 49 NY2d 557 [1980]).

The Court also finds that the MTA defendants have failed to raise a triable issue of fact. "Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead" (see Catanzaro v Ederly, 172 AD3d 995, 996 [2d Dept. 2019]; Tumminello v City of New York, 148 AD3d 1084 [2d Dept. 2017]). Even if the light was green, defendant Rosalle still had a duty to keep a safe distance between his vehicle and the vehicle in front of him. Defendant Rosalle testified that the traffic was moving slowly prior to the accident, and therefore, he should have anticipated that the vehicles in front of him may stop. Given these traffic conditions, as testified to by defendant Rosalle, his assertion that defendant Konstantin's vehicle came to a sudden stop is insufficient to raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision between their vehicles (Arslan v Costello, 164 AD3d 1408, 1410 [2d Dept. 2018]). Accordingly, the branch of the motion seeking summary judgment is granted, and the cross-claims asserted by the MTA defendants against the A & T defendants are dismissed.

The branch of the motion seeking to dismiss pursuant to CPLR 3211(a)(7) is denied as academic.

Based upon the foregoing, the motion is granted in part and denied in part.

Dated: August 23, 2019



ROBERT I. CALORAS, J.S.C.

