

McCants v Franchi

2020 NY Slip Op 31086(U)

April 24, 2020

Supreme Court, New York County

Docket Number: 155252/2014

Judge: Lisa A. Sokoloff

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This opinion is uncorrected and not selected for official publication.

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

-----X

TAMEKA MCCANTS,
Plaintiff,

-against-

JOSEPH FRANCHI JR. as driver and ROOSEVELT
ISLAND OPERATING CORPORATION, as owner

Defendant.

-----X

Action # 1

Index No.: 155252/2014

Mot. Seq. 2

MARIE LOMBARD,

Plaintiff,

-against-

TAMEKA MCCANTS, JOSEPH FRANCHI JR.,
ROOSEVELT ISLAND OPERATING CORPORATION,
THE NEW YORK CITY TRANSIT AUTHORITY, and
MTA BUS COMPANY and THE METROPOLITAN
TRANSIT AUTHORITY,

Defendant.

-----X

Action # 2

Index No.: 158126/2014

Mot. Seq. 1, 2, 3

DECISION AND ORDER

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

Papers	Numbered	NYCEF #
Action #1		
Plaintiff's Motion/ Affirmations/Memo of Law	<u>1</u>	35-57
Defendant's Opposition and Cross-Motion	<u>2</u>	59
Plaintiff's Reply	<u>3</u>	60
Action #2		
Plaintiff's Motion / Affirmation (Liability)	<u>1</u>	38-48
Defendant's Motion / Affirmation (Serious Injury)	<u>2</u>	50-72

LISA A. SOKOLOFF, J.

These actions arise from a two-vehicle accident which occurred on September 3, 2013, at 8:28am, on Main Street in Roosevelt Island near the Octagon. A Transit bus operated by McCants in which Lombard was a passenger was proceeding straight up Main

Street. The other vehicle, a Roosevelt Island bus operated by Franchi, was making a right turn out of the Octagon onto Main Street. The two buses collided with contact between the fronts of the buses in the lane in which the TA bus was travelling.

In the McCants action, plaintiff moved in seq. 002 for partial summary judgment against defendants Franchi and Roosevelt Island Operating Corporation [RIOC]. In Lombard seq. 001[misfiled mistakenly under McCants under seq. 003], plaintiff cross-moved for partial summary judgment on liability against Franchi and RIOC. In Lombard motions seq. 002 and 003, the defendants moved for summary judgment dismissing the complaint against Lombard for failure to meet the serious injury threshold.

For the reasons set forth on the record at oral argument [the transcript of which is e-filed as document 102 under Index no. 155252/2014 and is incorporated herein], the motions to dismiss the Lombard action are granted as the defendants established that her alleged injuries did not meet the serious injury threshold and she failed to raise a triable question of fact. Lombard admitted that she was not incapacitated for 90 out of the first 180 days post incident. Moreover, her injuries were only exacerbations of prior injuries for which her treater had recommended surgery prior to the subject accident. The reports of her treating physician, Howard Baum, fail to identify any quantitative or qualitative change in her condition as the result of the subject accident. *Nova v. Fontanez*, 112 AD3d 435 [1 Dept 2013].

Insofar as plaintiff Lombard's action is being dismissed as set forth above, her motion for partial summary judgment on liability against defendants Franchi and RIOC is denied as moot.

McCants also moves for partial summary judgment on liability against Franchi and RIOC. She argues that she had the right-away as Franchi had a traffic control device [stop sign] governing his turn. Franchi claims he looked both ways. He argues that there can be

more than one proximate cause to an accident and the operator with the right of way can still be partially at fault. He contends that the issue is not ripe for summary judgment and must go to a trier of fact.

The testimony is clear that Franchi pulled out onto Main Street and began making his right-hand turn while looking left, not right. As such he could not and did not see the TA bus. Since his bus was long and not articulated, Franchi had to bring it into the lane for vehicles going in the other direction. McCants testified that when she saw Franchi's bus, she stopped. He never saw her and drove directly into the front of her bus as he attempted to turn right.

By failing to look in the direction he was turning his bus and to avoid the TA bus which was advancing up the roadway, Franchi violated Vehicle and Traffic Laws sections 1142(a) and 1172. Accordingly, plaintiff is entitled to partial summary judgment on liability against Franchi and RIOC. Her potential culpable conduct for failing to act reasonably under the circumstances [by driving too quickly and failing to honk her horn], if any, is a question for the trier of fact and does not prevent her obtaining judgment against the adverse vehicle owner and driver. *Rodriquez v City*, 31 NY3d 312[2018].

Accordingly, it is hereby

ORDERED that the Lombard action is dismissed with prejudice; and it is further

ORDERED that McCants motion for partial summary judgment on liability is granted; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of McCants on the issue of liability and against Joseph Franchi Jr. and Roosevelt Island Operating Corporation, with interest on any damages verdict running from the date of the liability judgment; and it is further

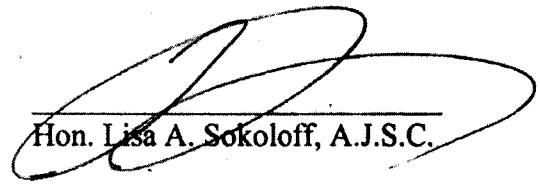
ORDERED that an immediate trial of the issues regarding damages shall be had before the court; and it is further

ORDERED that McCants shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and shall serve and file with the Clerk a note of issue and statement of readiness and shall pay the fee therefor, and the Clerk shall cause the matter to be placed upon the calendar for trial before the Part 21 judge; and it is further

ORDERED that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

Dated: April 24, 2020
New York, New York

ENTER:


Hon. Lisa A. Sokoloff, A.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	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	