

Anderson v Metropolitan Transp. Auth.

2020 NY Slip Op 31979(U)

May 11, 2020

Supreme Court, Queens County

Docket Number: 706374/2018

Judge: Joseph Risi

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This opinion is uncorrected and not selected for official publication.

FILED

**5/14/2020
10:40 AM**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 3

-----X
EDWARD S. ANDERSON,

Index Number 706374/2018

**COUNTY CLERK
QUEENS COUNTY**

Plaintiff,

DECISION/ORDER

--against--

Motion Sequence No. 4

METROPOLITAN TRANSPORTATION
AUTHORITY, METRO TRANSIT
AUTHORITY, NYC TRANSIT AUTHORITY
AND DHANPAUL D. SINGH,

Defendants,

-----X

The following papers numbered 1 to 9 read on defendants' motion seeking an order pursuant to CPLR §3211 and §3212 granting summary judgment on the grounds of liability.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Exhibits and Service.....	1-4
Affirmation in Opposition, Exhibit and Service.....	5-7
Reply and Service.....	8-9

Upon the foregoing papers, the motion is determination as follows:

Plaintiff commenced this action by the filing of a summons and complaint on or about April 24, 2018 to recover for injuries resulting from a motor vehicle accident on January 24, 2018 on Merrick Boulevard at or near its intersection with 107th Avenue, Queens County, City and State of New York. Defendants filed an answer on or about June 21, 2018.

In support of their motion, defendants submit, *inter alia*, an affirmation from counsel; a copy of the pleadings; an affidavit of authentication of the bus video on the day of the accident and the video itself; screenshots photos of the video; and the deposition transcripts of plaintiff and defendant driver, Dhanpaul D. Singh.

While defendants are moving for summary judgment pursuant to CPLR §3211 and §3212, it appears that they are moving under CPLR §3212 based upon the papers submitted. Thus, this court will proceed with determining defendants' motion for summary judgment pursuant to CPLR §3212.

As a preliminary matter, the court notes that the submitted transcripts are admissible. An unsigned transcript is admissible for the purposes of a motion for summary judgment where it is certified and its accuracy is not challenged. (*Rodriguez v. Ryder Truck, Inc.*, 937 N.Y.S.2d 602 [2d Dept 2012]). Moreover, unsigned transcripts submitted by the party deponent themselves are adopted as accurate by that party. (*Id.*).

Here, plaintiff's counsel alleges that plaintiff's deposition transcript was unsigned and not forwarded to them. However, defendants attached a letter establishing that they sent plaintiff's counsel a copy of said transcript. (*Rosenblatt v. St. George Health & Racquetball Assoc., LLC*, 984 N.Y.S.2d 401, 405 [2d Dept 2014]). Furthermore, plaintiff adopted the certified transcript in their opposition.

Plaintiff testified at his deposition that there were two lanes of travel and a left turn lane on Merrick Boulevard and he was traveling in the left lane prior to the accident. He had not driven in the left turn lane prior to the accident. He stated that prior to the accident, he was travelling straight when the impact with the bus occurred to his rear. He further testified that he did not see the bus prior to the accident because he was not paying attention.

Defendant Singh testified at his deposition that as he was travelling straight in the left lane. He also stated that although he saw plaintiff's vehicle in the left turning lane prior to the accident, plaintiff unexpectedly merged from that turning lane into his lane of travel.

In his affidavit authenticating the bus video footage, John Paul Laquindanum states that he is employed by SafeFleet, a subcontractor of NYCTA, as a Video Data Manager. Mr. Laquindanum

states that his review of the footage showed that:

“[T]he bus entered the left travel lane just prior to the beginning of the left turn lane on Merrick Boulevard near 107th Avenue and remained in the left travel lane up to the point of impact. Plaintiff’s vehicle is first seen passing the bus while driving in the left turn lane. Plaintiff’s vehicle is next seen as it suddenly and unexpectedly cuts in front of the bus and strikes the bus on the left front corner. Review of said video submitted by defendants show the accident occurred as described in the aforementioned affidavit.”

Review of the submitted timestamped photographs reveals that plaintiff’s vehicle merged suddenly into the bus’s lane of travel just prior to the impact.

The proponent of summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (*see Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

Pursuant to VTL § 1146(a), every operator of a motor vehicle has an obligation to keep a proper lookout and to see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles or pedestrians. (*See Paris v Ferri*, 122 AD3d 814 [2d Dept 2014]; *Lu Yuan Yang v Howsal Cab Corp.*, 106 AD3d 1055 [2d Dept 2013]; *Colpan v Allied Cent. Ambulette, Inc.*, 97 AD3d 776 [2d Dept 2012]).

Additionally, “The emergency doctrine holds that those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision with weighing alternate courses of conduct, may not be negligent if their actions are reasonable and prudent in the context of the emergency.” (*Evans v. Bosl*, 75 AD3d 491, 492, 905 NYS 2d 254, quoting *Bello v. Transit Auth. of N.Y. City*, 12 AD3d 58, 60, 783 NYS 2d 648; *see Miloscia v. New*

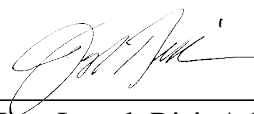
York City Bd. of Educ., 70 AD3d 904, 905, 896 NYS 2d 109; *Vitale v. Levine*, 44 AD3d 935, 936, 844 NYS2d 105). Although the existence of an emergency and the reasonableness of the response to it generally present issues of fact for purposes of application of the emergency doctrine (*see Lonegran v. Almo*, 74 AD3d 902, 903, 904 NYS2d 86; *Khan v. Canfora*, 60 AD3d 635, 636, 874 NYS2d 243), those issues may in appropriate circumstances be determined as a matter of law (*see Tsai v. Zong-Ling Duh*, 79 AD3d 1020, 2021, 913 NYS2d 748).

Here, in consideration of the evidence most favorably to plaintiff, the non-moving party, defendants have sufficiently demonstrated their entitlement to judgment as a matter of law. Defendant Singh was confronted with an emergency not of his own creation when plaintiff suddenly merged into his lane of travel without warning. In fact, plaintiff conceded in his deposition that he was not “really paying attention” prior to the accident, thereby violating VTL § 1146(a), by failing to see what there was to be seen. In opposition, plaintiff fails to raise a triable issue of fact necessary to defeat this summary judgment motion.

Accordingly, defendants’ motion for summary judgment is granted.

This is the decision and Order of the Court.

Dated: May 11, 2020



Hon. Joseph Risi, A.J.S.C.



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QUEENS COUNTY**