

Scioli v Joseph
2021 NY Slip Op 30990(U)
March 22, 2021
Supreme Court, New York County
Docket Number: 154550/2020
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART IAS MOTION 21

Justice

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INDEX NO. 154550/2020

NICHOLAS SCIOLI,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

JOHNNY JOSEPH, MAGGIES PARATRANSIT CORP, MTA
BUS COMPANY, METROPOLITAN TRANSPORTATION
AUTHORITY (MTA), NEW YORK CITY TRANSIT
AUTHORITY

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21,
22, 23, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that plaintiff's motion for summary
judgment on the issue of liability is granted, and the cross-motion of defendants MTA Bus
Company, Metropolitan Transportation Authority and New York City Transit Authority
(collectively, the "Transit Defendants") is also granted. This personal injury matter arises out of
an incident that occurred on February 27, 2020, at the intersection of Twelfth Avenue and West
24th Street in Manhattan. Plaintiff alleges that his vehicle was stopped at a red light at the
intersection when it was rear-ended by a vehicle owned by defendant New York City Transit
Authority and operated by defendant Johnny Joseph. Plaintiff now moves pursuant to CPLR
3212 for summary judgment against defendants on the issue of liability. Defendants oppose the
motion, and cross-move for summary judgment dismissing the complaint as against the Transit
Defendants. Plaintiff opposes the cross-motion.

Motion for Partial Summary Judgment

It is well-settled that “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 demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). “[A] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident”. *Cruz v. Lise*, 123 A.D.3d 514 (1st Dep’t 2014).

Plaintiff has made a *prima facie* showing of entitlement to summary judgment on the issue of liability. The evidence proffered, including the certified Police Accident Report, establishes that plaintiff’s vehicle was stopped at a red light at the time his vehicle was hit from the rear by defendants’ vehicle. As such, plaintiff cannot be shown to have engaged in any culpable conduct in connection with the disputed incident, as a matter of law. Defendants do not dispute that plaintiff’s vehicle was struck from behind, and have not presented evidence establishing a non-negligent explanation for striking the rear of plaintiff’s vehicle. Therefore, plaintiff is entitled to summary judgment on the issue of liability as against those defendants who remain after the granting of the cross-motion discussed hereinbelow.

Cross-motion for Summary Judgment

Likewise, defendants have made a *prima facie* showing of entitlement to summary judgment with respect to the Transit Defendants. The evidence before the court establishes that defendant MTA Bus Company did not own, operate, manage, maintain or control the vehicle at issue. Moreover, defendant Metropolitan Transportation Authority also did not own, operate,

manage, etc., the vehicle as issue. Its functions “with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility.” *Delacruz v. Metropolitan Transportation Authority*, 45 A.D.3d 482, 483 (1st Dep’t 2007); *see also HRH Construction LLC v. Metropolitan Transportation Authority*, 33 A.D.3d 568, 570 (1st Dep’t 2006). As such, neither defendant could be liable to plaintiff.

Finally, defendant New York City Transit Authority is not liable to plaintiff by virtue of 49 U.S.C. § 30106 (the Graves Amendment). The Graves Amendment bars state statutory and common law vicarious liability actions against owners of motor vehicles that are in the business of renting or leasing motor vehicles for the negligence of the drivers. The affidavit and documentary evidence in support of a Graves Amendment motion must establish that the movant was the owner of the vehicle, engaged in the business of leasing motor vehicles, and was not negligent. *Zielinski v. New Jersey Transit Corp.*, 170 A.D.3d 927, 928-29, 96 N.Y.S.3d 78, 79-80 (2d Dep’t 2019). Here, defendants have made the requisite showing of entitlement to summary judgment pursuant to the statute. The affidavit of John Salerno (Affirmation in Support, Exhibit B) establishes that New York City Transit Authority is the title holder of vehicles, including the one at issue, which are then leased to third-party transportation providers. The vehicle at issue was leased to defendant Maggie’s Paratransit Corp., who was required pursuant to the lease agreement to maintain and repair the vehicle. There are no allegations that New York City Transit Authority was negligent with respect to the mechanical operation of the vehicle as issue.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for partial summary judgment on the issue of liability is granted and defendants’ affirmative defenses with respect to comparative fault, culpable conduct and assumption of risk are dismissed, with prejudice; and it is further

ORDERED that defendants' motion for summary judgment dismissing the complaint herein as against the Transit Defendants is granted, and the complaint and all cross-claims are dismissed in their entirety as against the Transit Defendants, with costs and disbursements to the Transit Defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of Transit; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that defendants' counsel shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of 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).

This constitutes the decision and order of the court.

3/22/2021
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE