

Ramadhin v New York City Tr. Auth.

2021 NY Slip Op 33912(U)

March 29, 2021

Supreme Court, Richmond County

Docket Number: Index No. 150781/2018

Judge: Thomas P. Aliotta

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART TR-2

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DOOLADAYE RAMADHIN and JOAN PALMIERI,

HON. THOMAS P. ALIOTTA

Plaintiffs,

DECISION AND ORDER

Index No. 150781/2018

Motion Seq. No. 003

-against-

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY, PMT MANAGEMENT CORP.,
THE CITY OF NEW YORK, ACCESS-A-RIDE,
WILBERT A. MARTIN and VANESSA L. VITALONE,

Defendants.
-----X

Recitation pursuant to CPLR 2219(a) of the following papers numbered "1" through "6"
were fully submitted on the 10th day of March 2021:

	Papers Numbered
Notice of Motion for Summary Judgment by Defendants, The City of New York, The New York City Transit Authority, Access-A-Ride, PMT Management, LLC and Wilbert A. Martin, together with Affirmation in Support, with Supporting Exhibits (Dated: November 9, 2020)	1, 2
Affirmation in Opposition to Defendants' Motion for Summary Judgment by Plaintiff Joan Palmieri, with Supporting Exhibits (Dated: January 22, 2021).....	3
Affirmation in Opposition by Defendant Vanessa L. Vitalone, with Supporting Exhibits (Dated: February 22, 2021).....	4
Affirmation in Opposition by Plaintiff Dooladaye Ramadhin, with Supporting Exhibits (Dated: March 8, 2021)	5
Reply Affirmation, with Supporting Exhibits (Dated: March 9, 2021)	6

Upon the foregoing papers, the motion for summary judgment of defendants the City of New York, the New York City Transit Authority, Access-A-Ride, PMT Management LLC and Wilbert A. Martin (hereinafter, collectively “Martin”) is granted and the complaint is severed and dismissed as to the moving defendants.

This matter arises out of a two-vehicle accident that occurred on September 6, 2017, on Reid Avenue at its intersection with Jerome Road, Staten Island, New York. The intersection is controlled by a stop sign for traffic proceeding on Jerome Road.

At the time of the accident the plaintiffs, rear seat passengers in an Access-A-Ride sedan operated by Martin, were traveling on Reid Avenue when they felt a “heavy” impact to the driver side of their host vehicle, caused by a Jeep which had entered the intersection from Jerome Road (*see* Ramadhin 50-h transcript; NYSCEF #80, p. 29). Vitalone, the owner and operator of the Jeep, claims that she made a full stop at the stop sign on Jerome Road, looked up and down Reid Avenue, saw no traffic, and proceeded into the intersection where she tried to avoid being struck by a “speeding” Access-A-Ride vehicle (*see* Vitalone deposition transcript; NYSCEF #86, p. 37; *see also* p. 18, pp. 59-60). All parties agree that the collision occurred within the intersection, with Vitalone testifying that she first saw the Access-A-Ride when it was “in the middle of the intersection” (*see* NYSCEF #86, pp. 65-66).

Plaintiffs filed a note of issue on September 11, 2020 (NYSCEF #76). Martin, the owners and operators of the Access-A-Ride, now move for summary judgment dismissing the complaint and all cross claims as asserted against them. Plaintiffs and Vitalone oppose the motion.

The proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v. Citibank Corp.*, 100 NY2d 72, 81 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its *prima facie* burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez v. Prospect Hosp.*, 68 NY2d at 324; *see also Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *Chance v. Felder*, 33 AD3d 645, 645-646 [2d Dept. 2006]). Consequently, where the movant fails to meet his initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (*see Voss v. Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

Vehicle and Traffic Law §1142(a) provides that a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard. Moreover, a driver who has the right-of-way is entitled to anticipate that the other drivers will obey traffic laws that require them to yield (*see McPherson v Chanzeb*, 123 AD3d 1098 [2d Dept. 2014]; *internal citations omitted*).

Here, the evidence submitted by the Martin defendants in support of the motion established, *prima facie*, that Vitalone violated the statute by proceeding into the intersection without yielding the right of way to the Access-A-Ride, which she admitted was already within the intersection when she first saw it (*see Harris v. Linares*, 106 AD3d 873 [2d Dept. 2013]).

No triable issues of fact were raised in opposition. The fact that Martin testified that he was looking straight ahead in the direction he was traveling does not necessitate the conclusion that he was negligent, since “the defendant driver who had the right of way was entitled to

anticipate that the [cross moving vehicle] would obey the traffic law requiring [her] to yield” (*Harris v. Linares*, 106 AD3d 873, quoting *Hull v. Spagnoli*, 44 AD3d 1007, 1007 [2d Dept. 2007]). Vitalone’s contention that Martin was speeding is speculative and unsupported by any competent evidence (*Hou-Ching Chow v. Wong*, 34 AD3d 642 [2d Dept. 2006]).

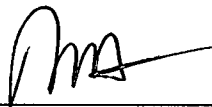
Accordingly, it is

ORDERED, that the motion for summary judgment by defendants the City of New York, the New York City Transit Authority, Access-A-Ride, PMT Management LLC and Wilbert Martin is granted, and it is further

ORDERED, that the Clerk enter judgment dismissing the complaint and any cross claims as against the moving defendants.

This constitutes the decision and order of the Court.

ENTER,



HON. THOMAS P. ALIOTTA, J. S. C.

Dated: March 29, 2021