

Gaffney v New York City Tr. Auth.

2021 NY Slip Op 34220(U)

August 27, 2021

Supreme Court, New York County

Docket Number: Index No. 155733/2018

Judge: Suzanne Adams

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE ADAMS PART 21

Justice

-----X

ANNETTE GAFFNEY,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
PEDRO SANCHEZ, HERTZ VEHICLES LLC, ALEX
BANKSTON

Defendant.

-----X

DECISION + ORDER ON
MOTION

INDEX NO. 155733/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 97

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that the summary judgment motion of defendants New York City Transit Authority, Metropolitan Transportation Authority and Pedro Sanchez (collectively, "Transit") is granted and the cross-motion of defendant Alex Lamont Bankston for summary judgment is also granted. In this personal injury action, plaintiff alleges that on August 22, 2017, she was a passenger on a bus owned and operated by Transit that came into contact with Bankston's vehicle near the intersection of Third Avenue and 90th Street in Manhattan. Transit moves for summary judgment pursuant to CPLR 3212 on the issue of liability, on the grounds that there is no evidence of any negligent operation of the bus. Bankston cross-moves for the same relief on the grounds that there is no evidence that the operation of her vehicle was a proximate cause of plaintiff's alleged injuries. Plaintiff opposes the motion and cross-

motion; Bankston opposes the cross-motion. The court notes that this action was voluntarily discontinued as against defendant Hertz Vehicles LLC (*see* NYSCEF doc. no. 27).

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)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it, and summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521-22 (1st Dep’t 1989).

In support of its motion, Transit proffers, *inter alia*, the bus surveillance video depicting the events in question. (Affirmation in Support, Exhibit F) The video clearly shows that the bus remained in its lane, the third from the right, as it travelled up Third Avenue, before stopping at a bus stop. The bus stayed in its lane without stopping, despite the fact that the front left side of Bankston’s vehicle appears at one point to enter the bus’s lane from the adjacent lane to the right, as it attempts a parallel park. The bus passed, but did not come into contact with, a FedEx truck that was double-parked in front of Bankston’s vehicle.

The burden now shifts to plaintiff to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so].” *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560 (1980). Plaintiff testified at her deposition that she was seated at the back of the bus when she felt its collision with Bankston’s vehicle, although she did not recall if any part of her body hit the bus interior. (Affirmation in Support, Exhibit I, pp. 51-52, 55) She said she then screamed to get the bus operator’s attention, at which point he “slammed on his brakes,” causing her to “[go] into the seat in front.” (*Id.*, p. 56)

Plaintiff further testified that the operator then continued driving another 10 or 20 blocks while she remained seated, “yelling and screaming,” until he “slammed on his brakes” again. (*Id.*, p. 56-57) In her affidavit submitted in opposition to the motion, plaintiff avers that she felt the collision with Bankston’s vehicle, although she did not witness the incident from inside the bus, and does not mention the bus stopping short twice thereafter. (Affirmation in Opposition, Exhibit A) Plaintiff’s narrative simply has no relation to what is depicted in the video. The bus travels consistently in its own lane and does not appear to stop, abruptly or otherwise, until it pulls up to the next bus stop. The video does not show any movement by the passengers indicating that the bus operator “slammed on his brakes.” As such, plaintiff fails to raise any triable issues of fact that are sufficient to defeat the motion.

Nor does defendant Bankston raise any factual issues sufficient to defeat Transit’s motion. Bankston’s deposition testimony that she was parked in her lane and that the bus swerved to the right and hit her car (Affirmation in Support, Exhibit K, p. 40) is belied by the video, which shows the front of her car entering the bus’ lane while attempting to parallel park, and the bus continuing straight in its own lane and passing, without contacting, the Fed Ex truck parked directly in front of Bankston’s vehicle. However, Bankston has established entitlement to summary judgment on the cross-motion. As discussed above, plaintiff’s testimony indicates that any claimed injury was the result of the bus operator’s allegedly slamming his brakes, and not from the contact with Bankston’s vehicle. Thus, irrespective of what Bankston was or was not doing at the time her vehicle made contact with the bus, such contact was not the cause of plaintiff’s claimed injuries.

Accordingly, it is hereby

ORDERED that Transit’s motion for summary judgment is granted and the complaint is dismissed as against Transit in its entirety; and it is further

ORDERED that defendant Bankston's cross-motion for summary judgment is granted and the complaint is dismissed as against Bankston in its entirety.

This constitutes the decision and order of the court.

<u>8/27/2021</u>					<u>SUZANNE ADAMS, J.S.C.</u>
DATE					
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
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"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE