Alston v County of Westchester
2022 NY Slip Op 31389(U)
March 14, 2022
Supreme Court, Westchester County
Docket Number: Index No. 70866/2018
Judge: James W. Hubert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PHYLLIS A. ALSTON, MAUREEN E. DAPRILE and NICOLE WILLIAMS,

Plaintiffs,

- against -

THE COUNTY OF WESTCHESTER, WESTCHESTER, COUNTY DEPARTMENT OF TRANSPORTATION, WESTCHESTER COUNTY DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION, W.S. GOODMOND, III, LEPRECHAUN LINES, INC. and MORTON MARSHALL,

Defendants.

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Index No. 70866/2018

Motion Seq. 2, 5 & 6

DECISION & ORDER

Hubert, J.S.C.

In this personal injury action, Plaintiffs, PHYLLIS ALSTON, MAUREEN DAPRILE, and NICOLE WILLIAMS, (hereinafter Plaintiffs), in motion sequences 2 and 6, have moved for an Order, pursuant to CPLR § 3212, granting Plaintiffs summary judgment against all Defendants on the issue of liability. In the alternative, Plaintiffs seek an Order granting partial summary judgment on the issue of culpable conduct, namely that Plaintiffs are not liable for the accident. Defendants, LEPRECHAUN LINES and MORTON MARSHALL (hereinafter "Leprechaun" and "Marshall"), in motion sequence 5, have similarly moved for an Order granting summary judgment on the issue of liability and to dismiss Plaintiffs' complaint along with any and all cross-claims.

Plaintiffs commenced an action seeking to recover damages sustained as a result of a two-vehicle accident that occurred on May 24, 2018. The accident involved a Liberty Lines bus (hereinafter "Liberty") operated by Defendant W.S. Goodmond III (hereinafter "Goodmond")

that collided with a Leprechaun bus operated by Defendant Marshall. The accident occurred near the Hospital Oval at or near the intersection of Emergency Drive, within Westchester County's Grasslands Reservation, in the town of Mount Pleasant, County of Westchester, State of New York.

The facts in this case are mainly undisputed. Plaintiffs were all passengers on the Leprechaun bus operated by Defendant Marshall. Plaintiffs were on their way home from work on May 24, 2018, at approximately 5:30 p.m. They were seated toward the back of the Leprechaun bus on the left side close to the window while it traveled on the Westchester County Medical Center campus. There came a point when the Leprechaun bus made a right turn onto Hospital Oval, a one lane, one way roadway. Defendant Marshall observed the Liberty bus behind his vehicle on Hospital Oval. At the intersection of Hospital Oval and Emergency Drive, there is a bus stop on the right-hand side of the road. There is a solid yellow line on the left side of the roadway.

Defendants have different accounts as to what occurred next. Defendant Marshall testified at his deposition that while driving the Leprechaun bus, he put on his right turn signal and pulled over slightly to the bus stop on the right side of Hospital Oval (*Marshall EBT Transcript*, pp. 105-107). Defendant Marshall briefly stopped at the bus stop, however, he did not open the doors since there were no passengers waiting to board or exiting the bus (*Marshall EBT Transcript*, p. 58). Defendant Marshall prepared to continue his route which required him to make a left turn onto Emergency Drive, a one-way street. Defendant Marshall testified that he turned on his left signal, looked left, then right checking the bus stop area and for traffic on Emergency Drive. Defendant Marshall testified after checking to the right, he turned the steering

wheel to the left and started to accelerate left in order to make the left-hand turn, without looking left (*Marshall EBT Transcript*, pp. 105-107).

Defendant Goodmond testified that he was driving on Hospital Oval behind the Leprechaun bus (*Goodmond EBT Transcript*, p. 28). The Leprechaun bus signaled and pulled to the right toward the bus stop. Defendant Goodmond further testified that he pulled the Liberty bus toward the left side of the driving lane and began to pass the stopped Leprechaun bus (*Goodmond EBT Transcript*, p. 34). Defendant Goodmond was unsure if he drove over the yellow line. According to Defendant Goodmond, the Leprechaun bus' four hazard lights were visible. Defendant Goodmond testified that he did not observe a left directional signal from the Leprechaun bus (*Goodmond EBT Transcript*, p. 35). Finally, Defendant Goodmond testified that his bus was a little bit ahead of the middle of the Leprechaun bus when the Leprechaun bus started to move causing his right-side mirror and front bumper to make contact with the left side of the Leprechaun bus (*Goodmond EBT Transcript*, pp. 35-36). His mirror punctured the windows on the side of the Leprechaun bus.

Plaintiffs testified that the impact from the collision between the two buses caused the window to break and they were thrown about in the bus. Plaintiffs contend they suffered abrasions and sustained bodily injuries to their neck, back and shoulders. Plaintiffs Alston and Daprile were taken by ambulance to Westchester Medical Center for further evaluation.

Plaintiffs Alston and Daprile commenced an action against the Defendants on December 21, 2018. Plaintiff Williams commenced an action against the Defendants on April 10, 2019. The Defendants filed answers and cross claims in both actions. On October 20, 2020, the actions were consolidated. After the completion of discovery, the note of issue was filed on May 26,

2021. The parties herein moved for the same relief under the original index number and were given leave to resubmit their motions under the consolidated index number.

Plaintiffs contend that they are entitled to summary judgment since they made a prima facie showing that the Defendants are liable for the accident. Plaintiffs contend that Defendants Leprechaun and Marshall operated the coach bus in a negligent manner. Plaintiffs assert Defendant Marshall's failure to check left prior to making a left turn and attempting the left turn from the right side of the roadway was negligent. Plaintiffs assert had Defendant Marshall looked, he would have easily been able to see the large bus passing on his left thereby avoiding the accident. Plaintiffs argue Defendants Leprechaun and Marshall violated Vehicle and Traffic Law (VTL) § 1160 (c) and § 1163 (a). Defendants were not in a proper position upon the roadway to make a turn with reasonable safety.

Similarly, Plaintiffs contend Defendants Liberty and Goodmond were negligent in the operation of their bus. Plaintiffs assert instead of waiting for the Leprechaun bus to leave the bus stop, Defendant Goodmond attempted to overtake the bus by driving outside the lane of traffic. Plaintiffs state Defendants Liberty and Goodmond are in violation of several VTL sections; namely VTL § 1122 (a), § 1128 (a), § 1128 (d) and § 1131. It is undisputed that this accident occurred on a one lane, one way roadway with a shoulder. Defendant Goodmond drove onto a portion of the shoulder when attempting to pass the Leprechaun bus. A driver must ensure that they can safely pass a vehicle before attempting to overtake the vehicle and should not drive on the shoulder to do so. Plaintiffs contend there is ample evidence to demonstrate the negligent conduct of all Defendants.

In the alternative, Plaintiffs contend, at the least, they are entitled to partial summary

judgment as they did not have any culpable conduct that contributed to the happening of the accident. Plaintiffs assert that they are innocent passengers and as such are entitled to a determination on the issue of liability irrespective of the unresolved issue of comparative fault between the Defendants.

In opposition and in support of their motion for summary judgment, Defendants Leprechaun and Marshall contend the Plaintiffs have failed to demonstrate as a matter of law that these Defendants were negligent. They assert there exists a question of fact whether Plaintiff Williams could be found to have proximately caused her injuries. Defendants contend Williams testimony that she "jumped up" when she saw the buses about to collide could be found to be unreasonable conduct. Defendants also contend Plaintiffs failure to wear seatbelts while riding the bus was negligent.

The moving Defendants further contend that Defendants Liberty, Goodmond and County of Westchester violated several VTL sections and were the sole proximate cause of the accident. Defendants contend that the overwhelming evidence demonstrates that the accident occurred exactly as Defendant Marshall testified. According to Defendant Marshall, his bus was ahead of the Liberty bus when he briefly stopped at the bus stop. He turned on his blinker, looked in his left mirror and right mirror before leaving the bus stop. As he was turning, the side of his vehicle was struck by Goodmond. Finally, Defendants Leprechaun and Marshall contend the video and photographic evidence corroborates his version of the events. Accordingly, Defendants Leprechaun and Marshall contend that only the co-Defendants were negligent and proximately caused the accident.

The standard to be applied when viewing motions for summary judgment is well settled.

Summary judgment may be granted only when no triable issue of fact exists (*see Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 [1986]). The initial burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material facts. A failure to make that showing requires the denial of that summary judgment motion, regardless of the adequacy of the opposing papers (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316 [1985]). However, once the movant establishes their initial burden, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 [1980]).

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v. Auto Mall Fleet Mgt., Inc.*, 163 A.D.3d 1033, 1033–1034, 83 N.Y.S.3d 74 [2d Dep't 2018]; see *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018]). "[A] violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se" (*Barbeiri v. Vokoun*, 72 A.D.3d 853, 856, 900 N.Y.S.2d 315 [2d Dept. 2010]). "If the plaintiff fails to demonstrate, prima facie, that the operator of the offending vehicle was at fault, or if triable issues of fact are raised by the defendants in opposition,. . . summary judgment on the issue of liability must be denied, even if the moving plaintiff was an innocent passenger" (*Phillip v. D&D Carting Co., Inc.*, 136 A.D.3d 18, 24, 22 N.Y.S.3d 75 [2d Dep't 2015]; *Ortiz v. Welna*, 152 A.D.3d 709, 710,

58 N.Y.S.3d 556 [2017]).

Here, Plaintiffs have established prima facie entitlement to judgment as a matter of law on the issue of liability against the Defendants by submitting among other things, the transcript of the deposition testimony of Plaintiffs Daprile and Alston, an affidavit of facts from Plaintiff Williams, the deposition testimony of Defendants Goodmond and Marshall, the police accident report, Defendant Liberty's investigation documents, and photographic evidence. Plaintiffs have demonstrated that they were passengers on a bus being driven by Defendant Marshall that collided with the bus driven by Defendant Goodmond. Defendant Marshall testified that while he was attempting to make a left-hand turn, his vehicle was struck on the driver's side by the bus driven by Defendant Goodmond. Defendant Goodmond testified that as he was passing the Leprechaun bus, Defendant Marshall, without looking or signaling, made a left turn into his vehicle. Under either scenario, there is no suggestion of negligence on the Plaintiffs behalf in causing the accident.

Plaintiffs have submitted evidence that Defendant Marshall attempted to execute a left turn in an unsafe manner by turning from the right side of the roadway from the bus stop, failing to look left before turning his wheels left and accelerating. Pursuant to VTL § 1160 (c) "At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane of the roadway lawfully available to traffic moving in the direction of travel of such vehicle. . ." Defendant Marshall's testimony demonstrates that he did not execute the turn in accordance with VTL § 1160.

In the present case, Marshall testified, immediately before the accident, he stopped in the

bus stop which was on the right side of Hospital Oval. Notwithstanding that it was a one lane road, Marshall testified that Hospital Oval was wide enough that another car could pass on the left when the bus pulled over. Upon exiting the bus stop, Marshall began his left turn from the right side of the roadway. Further, VTL § 1163 (a) states that "No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty,. . . or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety."

Plaintiffs have similarly shown Goodman was negligent when he drove on the shoulder and attempted to pass Marshall on a one lane roadway violating several VTL sections in particular: *VTL § 1128(a):* "A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety"; *VTL § 1128(d):* "When official markings are in place indicating those portions of any roadway where crossing such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive across such markings"; and *VTL § 1131* (in pertinent parts) "no motor vehicle shall be driven over, across, along, or within any shoulder . . . " Thus, Plaintiffs evidence demonstrated prima facie entitlement to summary judgment against the Defendants.

The burden thus shifted to Defendants to demonstrate there was a non-negligent explanation for the happening of the accident (*see Callahan v. Glennon*, 193 A.D.3d 1029, 147 N.Y.S.3d 665 [2d Dep't 2021]). The deposition testimony from both drivers and photographic evidence demonstrate they failed to exercise reasonable care in the operation of their vehicles and failed to see what was there to be seen (*see Balladares v. City of New York*, 177 A.D.3d 942, 114

N.Y.S.3d 448 [2d Dep't 2019]). While Defendants assert the negligence of the other was the proximate cause of the accident that is not sufficient to rebut Plaintiffs prima facie showing of entitlement of judgment on the issue of liability. "[T]he right of an innocent passenger to an award of summary judgment on the issue of liability against one driver is not barred or restricted by potential issues of comparative fault as between that driver and the driver of another vehicle involved in the accident" (*Rodriguez v. Farrell*, 115 A.D.3d 929, 930, 983 N.Y.S.2d 68, 70 [2' Dept. 2014]) [internal citations omitted].

"Moreover, to the extent that the defendants assert a seatbelt defense, an alleged failure by the injured plaintiff to wear a seatbelt is not relevant to the issue of liability but, rather, may "be introduced into evidence in mitigation of damages" (*Romain v. City of New York*, 177 A.D.3d 590, 591, 112 N.Y.S.3d 162 [2d Dep't 2019]).

Plaintiffs are thus entitled to summary judgment as a matter of law on the issue of liability as against the Defendants, and the only question remaining is the comparative fault between the Defendants. For the reasons stated above, Defendants Leprechaun and Marshall are not entitled to summary judgment.

Accordingly, it is hereby

ORDERED, that Plaintiffs motions, sequences 2 and 6, for summary judgment are granted; and it is further

ORDERED, that Defendants Leprechaun and Marshall motion, sequence 5, is denied; and it is further

ORDERED, that Plaintiffs shall serve a copy of this Order with notice of entry upon Defendants within seven days of the entry of this Decision & Order.

The foregoing constitutes the decision and orders of the Court.

Date: White Plains, New York
March 14, 2022

Hon James W. Hubert
Justice Supreme Court