

Davis-Betts v City of New York
2022 NY Slip Op 31593(U)
May 16, 2022
Supreme Court, New York County
Docket Number: Index No. 153427/2017
Judge: Denise M. Dominguez
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DENISE M. DOMINGUEZ

PART

Justice

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INDEX NO. 153427/2017

RHONDA DAVIS-BETTS,

MOTION DATE 03/02/2022

Plaintiff,

MOTION SEQ. NO. 005

- v -

THE CITY OF NEW YORK, NEW YORK CITY
TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA BUS
COMPANY, MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY, CELIA
O'CONNOR, RAMON CABRERA, JOHN DOES

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 107, 109, 113, 114, 115, 116, 117, 118

were read on this motion to/for SUMMARY JUDGMENT.

Upon review of the above listed documents and oral arguments heard on March 2, 2022, the motion is granted.

In this personal injury action, Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Authority, and bus operator, Celia L. O' Connor (collectively "Transit") move for summary judgment pursuant to CPLR 3212 alleging they have established entitlement to judgment as a matter of law and were not negligent in operating the bus involved in this accident. This Court agrees (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

BACKGROUND

On June 29, 2016, at approximately 12:45 p.m., Plaintiff, Rhonda Davis-Betts ("Plaintiff") was a passenger on a northbound Metropolitan Transit Authority ("MTA") bus

owned and operated by Transit. At the intersection of Broadway and La Salle Street in New York County, the MTA bus was stopped for a red light when it was struck by an alleged stolen minivan driven, by non-party Caspari Lee, and registered to owner Defendant, Ramon Cabrera (“Cabrera”). Plaintiff alleges sustaining injuries from the accident.

On April 12, 2017, Plaintiff commenced this negligence action against Defendants, the City of New York, Transit, and Cabrera. In particular, Plaintiff alleges that Transit was negligent, careless, and reckless in the ownership, operation, management and control of their vehicle.

Now, post-note of issue, Transit moves again for summary judgment. Plaintiff opposes.

DISCUSSION

With respect to motor vehicle accidents, it is well settled law that rear-end collisions with stopped vehicles, or with vehicles coming to a stop, create a prima facie case of negligence for the rear vehicle driver unless an adequate nonnegligent explanation for the accident is given (*Kalair v Fajerman*, 202 AD3d 625, 626 [1st Dept 2022] citing *Urena v GVC Ltd.*, 160 AD3d 467[1st Dept 2018]; *Androvic v Metropolitan Transp. Auth.*, 95 AD3d 610, 610 [1st Dept 2012]; *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

Here, Transit establishes its entitlement to summary judgment with the examination before trial (“EBT”) testimony of Plaintiff and O’ Connor. O’Connor testified that the MTA bus she was driving was at a complete stop for a red light when it was struck in the rear left side. Plaintiff also testified that the bus was at a stoplight when it was suddenly hit from behind (*see Kalair*, 202 AD3d at 626; *Androvic*, 95 AD3d 610).

In opposition, Plaintiff argues that Transit’s evidence is not in admissible form. Yet, a review of O’Connor’s deposition transcript shows it is signed, and the court reporter certified it

in accordance with CPLR 3116 (a) (NYSCEF Doc No. 98 at 70). Even if O'Connor's transcript was not signed, it is admissible, as a party to an action may submit an unsigned transcript in support of their own summary judgment motion (*Nyambuu v Whole Foods Mkt. Group, Inc.*, 191 AD3d 580, 582 [1st Dept 2021]; see *Castano v. Wygand*, 122 AD3d 476 [1st Dept. 2014] citing *Franco v. Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543 [1st Dept. 2013]).

Plaintiff also argues that Transit's motion is procedurally defective because its statement of material facts does not comply with court rules. While the better practice would have been for Transit's Statement of Material Facts to include with each numbered paragraph a specific "citation to the evidence" as opposed to legal conclusions and arguments or general references to the exhibits, in light of Transit's Affirmation in Support, pointing to specific EBT testimony, the motion does not warrant denial as procedurally defective (22 NYCRR § 202.8-g [d]; see *Loeb v. Assara New York LLP.*, 118 AD3rd 457 [1st Dept 2014]).

Plaintiff, however, does not dispute Transit's Statement of Material Facts that its bus was stopped at a red light when it was struck in the rear (NYSCEF Doc No. 100). Nor does Plaintiff offer any evidence of a non-negligent explanation for the accident or raise a triable issues of fact rebutting Transit's prima facia evidence for summary judgment (*Rodriguez v Sharma*, 178 AD3d 508, 509 [1st Dept 2019]; *Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Delgado v. Martinez Family Auto.* 113 AD3d 733 [1st Dept. 2014]).

Accordingly, it is ORDERED that the motion brought by Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Operating Authority, and Celia L. O'Connor, for summary judgment is granted, and the complaint is dismissed as against them; and it is further

ORDERED that any and all cross-claims against Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Operating Authority, and Celia L. O'Connor are dismissed; and it is further

ORDERED that the claims and cross claims against Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Operating Authority, and Celia L. O'Connor, are severed, and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Operating Authority, and Celia L. O'Connor, dismissing the claims and cross-claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.


5/16/2022
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:


HON. DENISE M. DOMINGUEZ
CLERK OF THE COURT
J.S.C.

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE