

Davis-Betts v City of New York
2022 NY Slip Op 31627(U)
May 18, 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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RHONDA DAVIS-BETTS,

Plaintiff,

- 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

Defendant.

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INDEX NO. 153427/2017
MOTION DATE 03/02/2022
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 93, 104, 106, 108, 110, 111, 112, 119, 120, 121, 122

were read on this motion to/for DISMISSAL/ SUMMARY JUDGMENT

This personal injury action arises out of a motor vehicle accident between a public bus and a vehicle attempting to flee from the police. Defendant, the CITY OF NEW YORK ("City") moves for dismissal of the complaint for failure to state a cause of action pursuant to CPLR 3211(a) (7), or in the alternative for summary judgment pursuant to CPLR 3212. For the reasons that follow and having heard oral arguments on March 2, 2022, the motion is granted.

BACKGROUND

On June 29, 2016, Plaintiff, Rhonda Davis-Betts ("Plaintiff") was a passenger on a bus, owned and operated by Defendants, New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, Manhattan and Bronx Surface Transit Authority, and bus driver, Celia L. O' Connor (collectively "Transit"). At approximately 12:45 p.m., at the intersection of Broadway and La Salle Street in New York County, the bus while stopped for a

red light, was struck in the rear left side by an alleged stolen minivan driven by non-party Caspari Lee, and registered to owner Defendant, Ramon Cabrera (“Cabrera”).

On April 12, 2017, Plaintiff commenced this negligence action against Defendants, the City of New York, Transit, and Cabrera. Plaintiff alleges that Defendants were “negligent, careless and reckless in the ownership, operation, management, and control of their said motor vehicles”, causing her injuries (NYSCEF Doc No. 75, ¶ 19).

The City, now, post-note of issue, moves for dismissal or in the alternative for summary judgment. Plaintiff opposes and Cabrera joins in Plaintiff’s opposition.

RELEVANT TESTIMONY

On November 13, 2019, Plaintiff deposed Police Officer Jeffrey Soto (“Officer Soto”), an officer involved in the pursuit and capturing of the minivan driver. According to Officer Soto, on June 29, 2016, he received a radio call and joined other police cars in the pursuit of a stolen minivan, traveling northbound on Broadway and West 106th Street (NYSCEF Doc No. 81, at 10, 12-13, and 14-15). During the pursuit, he saw the minivan traveling at a high rate of speed, running multiple red lights, and “jumping in, [and] jumping out” between the northbound and southbound traffic on Broadway (*id.* at 16-17). He also recalls seeing “pedestrians running out of the way” (*id.* at 17). As the minivan approached the intersection of Broadway and LaSalle Street, a bus and another van were stopped for a red light blocking the path of the minivan and forcing it to come to a complete stop (*id.* at 18). Officer Soto then stopped his patrol car directly behind the minivan and using the intercom, instructed the vehicles blocking the minivan’s route not to move when the traffic light changed (*id.* at 19, 21 and 46). Officer Soto then exited his patrol car, approached the driver’s side window of the minivan and instructed the driver to shut the car off and get out (*id.* at 19 and 22). The driver did not comply (*id.*). Officer Soto then

broke the side window of the minivan with his baton (*id.* at 19). At that point, the driver put the stolen minivan in reverse, struck the front of Officer Soto's patrol car, drove forward towards Officer Soto and "clipped" the leg of a lieutenant, reversed and struck Officer Soto's patrol car again, then attempted to flee the scene by driving in between the stopped van in the left lane and the stopped bus in the right lane (*id.* at 23-25). The minivan sideswiped both the van and the bus, then reversed out of the "wedge," and fell into neutral (*id.* at 27 and 45). At that point Officer Soto jumped inside the minivan through the window, subdued the driver, unlock the door and then other officers pulled him out and arrested him (*id.* at 27-28).

DISCUSSION

Motions to dismiss pursuant to CPLR 3211[a][7], in general, are intended to remedy pleading defects (*see Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]). In contrast, motions for summary judgment pursuant to CPLR 3212 seek a judicial decision that there are no material issues of fact for trial (*Nonnon v City of New York*, 9 NY3d 825 [2007]). In light of this motion being filed post note of issue, and Plaintiff alleging that material issues exist, it will be treated as a motion for summary judgment (*see CPLR 3212; Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Here, the undisputed and sworn testimony of Officer Soto, establishes the City's entitlement to judgment as a matter of law. First, Officer Soto testified that he heard about the pursuit over his police radio and that he personally witnessed the minivan driver driving erratically northbound on Broadway for several blocks. He also states that the vehicular pursuit of the minivan had terminated because of stopped traffic at an intersection, which caused the minivan and the patrol cars in pursuit to stop. He then witnessed the minivan while at a standstill

continue to attempt to flee by nearly running over the leg of a police lieutenant and striking his's vehicle, the full-size van, and the bus in which plaintiff was a passenger.

Thus, the evidence establishes that the conduct of the police was not the proximate cause of Plaintiff's injuries. Rather, the only proximate cause of Plaintiff's injuries was the independent, unlawful, and reckless conduct of the minivan driver (*Melendez v City of New York*, 171 AD3d 566, 567 [1st Dept 2019]; *see e.g., Alexander v City of New York*, 176 AD3d 659, 661 [2d Dept 2019]; *Aqeel v Tony Casale, Inc.*, 44 AD3d 572, 573 [1st Dept 2007]; *Gaudio v City of New York*, 189 AD3d 1546 [2d Dept 2020]); *Fuchs v City of New York*, 186 AD3d 459 [2d Dept 2020]; *Greenwalt v Village of Cambridge*, 67 AD3d 1158, 1160 [3d Dept 2009]).

In opposition, Plaintiff allege that triable issues of fact exist. However, Plaintiff does not provide any evidence in admissible form negating Officer Soto's account of the accident nor rebut the City's Statement of Material Facts that the police vehicular pursuit ceased before the minivan struck the bus. An allegation in Plaintiff's attorney's affirmation that Officer Soto admitted to driving above the speed limit while pursuing the driver of the minivan is insufficient. Thus, the City's prima facia burden of entitlement to judgment is un rebutted.

Accordingly, it is ORDERED that the motion brought by Defendant, the City of New York, for summary judgment is granted, and the complaint is dismissed as against them; and it is further

ORDERED that all crossclaims against Defendant, The City of New York are dismissed; and it is further

ORDERED that the claims and cross claims against Defendant, the City of New York, 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 Defendant, the City of New York, dismissing the claims and crossclaims 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.

5/18/2022
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE

Denise M. Dominguez
HON. DENISE M. DOMINGUEZ
 J.S.C.