

<b>Williams v Westchester County Dept. of Transp.</b>
2022 NY Slip Op 31826(U)
April 7, 2022
Supreme Court, Westchester County
Docket Number: Index No. 65074/2018
Judge: James W. Hubert
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
LARAWN WILLIAMS,

Plaintiff,

Index No. 65074/2018

-against-

**DECISION & ORDER**

WESTCHESTER COUNTY DEPARTMENT OF  
TRANSPORTATION, COUNTY OF WESTCHESTER,  
LIBERTY LINES TRANSIT, INC., ELVIS HIRALDO  
and CHRISTIAN EVERTS,

Motion Seq. #1 and #2

Defendants.

-----X  
Hubert, J.S.C.

In this action to recover for personal injuries allegedly sustained as the result of a motor vehicle accident, Defendants Westchester County Department of Transportation, County of Westchester, Liberty Lines Transit, Inc., and Elvis Hiraldo (hereinafter “the County Defendants”) now move for an order; pursuant to CPLR §3212, granting summary judgment on the issue of liability and dismissing the complaint and all cross-claims against them, contending, *inter alia*, that Co-Defendant Christian Everts’ negligence was the sole proximate cause of the accident.

Plaintiff Larawn Williams opposes the County Defendants’ motion and has filed a cross-motion seeking partial summary judgment on the issue of his lack of culpable conduct pursuant to CPLR § 3212 (g) and grant partial summary judgment on the issue of liability arguing that each Defendant’s negligence is established as a matter of law.

The accident in question occurred on the morning of December 11, 2017, at the intersection of Yonkers Avenue and Central Park Avenue in Yonkers, New York. The County

Defendants allege that the accident occurred when Defendant Christian Everts' vehicle, while attempting to get in front of a bus owned by Liberty Lines Transit and driven by Elvis Hiraldo struck the bus, identified as Bus #512. Plaintiff was a passenger in Everts' vehicle at the time of the accident. Plaintiff commenced this action by filing a summons and complaint on September 26, 2018.

In support of their motion, the County Defendants, submit to the Court a copy of the parties' pleadings, a copy of the operator incident report, and a copy of the bus recording video from the Liberty Lines Transit Bus #512 at the time of the accident, with an affidavit alleged to authenticate the video. The County Defendants argue that the submitted video demonstrates that Bus #512, driven by Hiraldo, was proceeding in a straight line when the vehicle driven by Everts comes from the bus' left side, makes a right turn, and collides with the bus. As such, the County Defendants contend they should be granted summary judgment because Everts was negligent by violating Vehicle and Traffic Law §§1123(b), 1128(a), and 1146(a) in making an improper and unsafe lane change, failing to observe traffic with right of way, and failing to exercise due care to avoid striking the bus.

In support of his opposition and cross-motion for summary judgment, the Plaintiff argues that the incident report submitted by the County Defendants is inadmissible as it contains hearsay statements, and the video is inadmissible as it is not properly authenticated by the bus driver. Further, Plaintiff relies upon, *inter alia*, the respective deposition transcripts of the Plaintiff, Hiraldo, and Everts to argue that material issues of fact exist.

Pursuant to CPLR §3212 (b), a motion for summary judgment "shall be granted...if the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party... [but] shall be denied if any party shall show facts

sufficient to require a trial of any issue of fact.” Further, in determining a motion for summary judgment, the Court, “must view the evidence in the light most favorable to the nonmoving party.” *See, Stukas v Streiter et al.*, 83 A.D.3d 18, 918 N.Y.S.2d 176 (2<sup>nd</sup> Dept. 2011). “Summary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues.” *See, Streiter* at 23 citing *Millerton Agway Coop. v Briarcliff Farms*, 17 N.Y.2d 57, 268 N.Y.S.2d 18 (1966).

Even assuming, *arguendo*, that the report and video submitted in support of the County Defendants’ motion for summary judgment are admissible, a review of the deposition transcripts submitted as Plaintiff’s Exhibits reveals that the Plaintiff, Hiraldo, and Everts each provide conflicting versions as to how the accident occurred. The Plaintiff states that as Everts was going forward making a right, with the right turn signal on, Hiraldo went forward and made a left. Hiraldo states that after stopping the bus for passengers to exit and enter, he put on his left turn signal, looked in the left mirror, saw vehicles in the left lane including Everts’ vehicle, and started moving the bus by pulling off from the bus stop and proceeding straight. Everts states that he had his right turn signal on before the collision, began to turn right, observed a pedestrian causing him to slow down, and at that point the bus driven by Hiraldo was veering to the left and collided with his vehicle.

The conflicting testimony set forth in the deposition transcripts of the Plaintiff, Hiraldo, and Everts regarding the circumstances surrounding the accident raise triable issues of fact as to whether the County Defendants contributed to the happening of the accident. *Steiner v. Dincesen*, 95 A.D.3d 877, 943 N.Y.S.2d 585 (2<sup>nd</sup> Dept. 2012) citing *Kaplan v. County of Nassau*, 60 A.D.3d 816, 875 N.Y.S.2d 214 (2<sup>nd</sup> Dept. 2009). As such, the County Defendants’ motion for summary judgment must be denied.

Similarly, the Plaintiff's argument that he be granted partial summary judgment on the issue of liability also fails here. In submitting the deposition transcripts of the Plaintiff, Hiraldo, and Everts setting forth conflicting accounts of how the accident happened, the Plaintiff fails to meet his burden of eliminating all triable issues of fact. *Oluwatayo v. Dulinayan*, 142 A.D.3d 113, 35 N.Y.S.3d 84 (1<sup>st</sup> Dept. 2016). Given that issues of fact exist as to which vehicle was responsible for the accident, this Court cannot grant Plaintiff's summary judgment on the issue of liability as against any Defendant. *Buffa v. Carr*, 148 A.D.3d 606, 50 N.Y.S.3d 352 (1<sup>st</sup> Dept. 2017).

The County Defendants do not oppose the branch of the Plaintiff's motion for summary judgment on the Plaintiff's lack of fault or culpable conduct. Courts have held that "in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination that she had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver's negligence." *See, Oluwatayo* 142 A.D.3d 113, 119, 35 N.Y.S.3d 84 (1<sup>st</sup> Dept. 2016); *Medina v. Rodriguez*, 92 A.D.3d 850, 949 N.Y.S.2d 514 (2<sup>nd</sup> Dept. 2012). As such, the Plaintiff's request for partial summary judgment on the issue of Plaintiff's lack of culpable conduct shall be granted.

Everts filed opposition to the County Defendants' motion seeking summary judgment and the Plaintiff's cross-motion seeking partial summary judgment on liability as to all Defendants, respectively. The Plaintiff argues that Everts' opposition is untimely pursuant to CPLR §2214(b) and should be rejected. The County Defendants join in this application. CPLR §2214(b) promulgates:

"A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard. Answering affidavits shall be served at least

two days before such time. Answering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time demands; whereupon any reply or responding affidavits shall be served at least one day before such time.”

Here, where both the County Defendants’ motion and the Plaintiff’s cross-motion were served at least sixteen days prior to the return date of March 18, 2021, Everts was required to serve answering affidavits at least seven days prior to March 18, 2021. However, Everts’ opposition was filed on March 16, 2021, only two days prior to the return date and he failed to provide a valid excuse for the late service. As such, the Court refuses to consider Everts’ opposition papers. *Risucci v. Zeal Mgt. Corp.*, 258 A.D.2d 512, 685 N.Y.S.2d 280 (2<sup>nd</sup> Dept. 1999).

Accordingly, it is hereby:

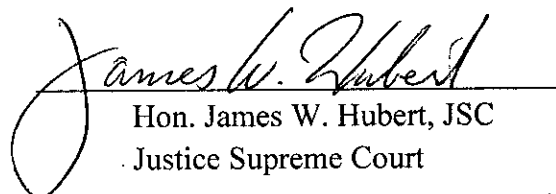
**ORDERED**, that the County Defendants’ motion for summary judgment is denied, and it is further

**ORDERED**, that the Plaintiff’s cross-motion for partial summary judgment against Defendants on the issue of liability is denied, and it is further

**ORDERED**, that the Plaintiff’s cross-motion for partial summary judgment on his lack of culpable conduct is granted.

The foregoing constitutes the Decision & Order of the Court.

Dated: White Plains, New York  
April 7, 2022

  
Hon. James W. Hubert, JSC  
Justice Supreme Court