

Johnson v New York City Tr. Auth.
2022 NY Slip Op 35121(U)
August 15, 2022
Supreme Court, Queens County
Docket Number: Index No. 704418/2022
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

IAS Part 20

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KAMLA JOHNSON,

Index No.: 704418/2022

Plaintiff,

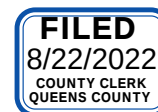
Motion Seq. No.: 1

-against-

Motion Date: 5.25.2022

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
MTA BUS COMPANY, MABSTOA and EROLD
CANTAVE,

Motion Cal. No.: 21

Defendants.
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The e-filed documents bearing NYSCEF document numbers 9-17, 21-24 and 26 were read on the motion of the plaintiff, Kamla Johnson (the “Plaintiff”), for an Order, *inter alia*, granting partial summary judgment on the issue of liability against the defendants, New York City Transit Authority (“NYCTA”), Metropolitan Transportation Authority (the “MTA”), MABSTOA and Erolld Cantave (“Cantave” (collectively, the “Defendants”).

The Plaintiff commenced this cause seeking to recover monetary damages for personal injuries allegedly sustained in a motor vehicle accident. Presently before the Court is the Plaintiff’s motion for an Order granting: (1) partial summary judgment on the issue of legal liability against the Defendants; (2) dismissing the Defendants’ affirmative defenses of comparative negligence, contributory negligence and culpable conduct; and (3) scheduling a trial on the issue of damages. For the following reasons, the motion is granted in part and denied in part.

I. Factual Background and Procedural History

The accident giving rise to this cause took place occurred on August 23, 2021 on 105th Street at or near Archer Avenue, Queens County, New York. Two vehicles were involved in the event. The Plaintiff was the operator of one of the vehicles. The second vehicle was a bus operated by Cantave and owned by NYCTA.

In her affidavit in support, the Plaintiff avers as follows:

At the time of the collision, I was the operator of a motor vehicle on
150th Street at or near Archer Avenue, Queens, New York when

I was rear ended by defendant bus. I was driving approximately 15 miles per hour when the defendant bus rear ended me ... Defendant bus without warning rear ended my motor vehicle.

In his affidavit in opposition, Cantave states:

I am employed as a bus driver for the New York City Transit Authority ... On August 23, 2021, I was travelling on 150th Street during a heavy rainstorm. As I attempted to apply my brakes on the wet roadway, the bus slid into a slow moving vehicle in front of me [the Plaintiff's vehicle] due to slippery roadway conditions.

II. Discussion

A. The Branch of the Motion for Summary Judgment on the Issue of Legal Liability

The law relative to this motion is settled.

Pursuant to Vehicle and Traffic Law §1129 [a]:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

Consistent with the subject statutory provision, it was held in *Newman v Apollo Tech Iron Work Corp.*, 188 AD3d 902, 902 [2d Dept 2021], that: “[t]he driver of an automobile approaching another automobile from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle [citations omitted].”

Here, the affidavits of the Plaintiff and Cantave reveal that there is no factual dispute that the NYCTA bus operated by Cantave rear-ended the Plaintiff's vehicle. The Plaintiff therefore establishes *prima facie* entitlement to judgment as a matter of law on the issue of legal liability against the subject defendants (*see id.*; *Gil v Manhattan Beer Distributors, LLC*, ___ AD3d ___, 2022 NY Slip Op 04537 [2d Dept 2022]).

Parenthetically, Cantave's negligence must be imputed to NYCTA, the owner of the bus he was operating, pursuant to Vehicle and Traffic Law §388, which provides:

Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.

The next issue is whether the opposition of Cantave and NYCTA raise a triable issue of fact. Here, they contend that the bus rear-ended the Plaintiff's vehicle because of slippery roadway conditions. They also point to the fact that it was raining heavily at the time of the accident. The law is settled, however, that the inference of negligence is not rebutted "... by the mere assertion that the [D]efendants' vehicle was unable to stop on the allegedly wet roadway [citations omitted]" (*Volpe v Limoncelli*, 74 AD3d 795 [2d Dept 2020]); *see Pincus v Cohen*, 198 AD2d 405 [2d Dept 1993]). Thus, Cantave and NYCTA fail to rebut the presumption of negligence against them.

The opposition argument that the Plaintiff's motion is premature is also without merit (*see* CPLR 3212[f]). Contave and NYCTA "fail[] to establish that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion [are] exclusively within the knowledge and control of the [P]laintiff [citations omitted]" (*Gil v Manhattan Beer Distributors, LLC*, ___ AD3d ___, 2022 NY Slip Op 04537, * 2).

For the reasons stated above, the Plaintiff is granted summary judgment against Contave and NYCTA.

The Plaintiff is, however, not entitled to summary judgment against the MTA and MABSTOA. When a movant does not "sufficiently demonstrate its right to summary judgment" the Court must deny the motion "regardless of the sufficiency, or lack thereof, of the opposing papers" (*Cugini v Sys. Lbr. Co., Inc.*, 111 AD2d 114, 115 [1st Dept 1985]). Here, there is no evidence in admissible form to warrant summary judgment against MTA and MABSTOA.

B. The Branch of the Motion to Dismiss Affirmative Defenses

The branch of the motion to dismiss affirmative defenses is granted to the extent that the affirmative defenses of Contave and NYCTA which allege comparative negligence, contributory negligence and culpable conduct by the Plaintiff is granted. As noted, the Plaintiff has established that the bus operated by Cantave and owned by NYCTA rear-ended her vehicle. The subject defendants present no valid factual or legal grounds in opposition to the request to dismiss the subject affirmative defenses.

C. The Branch of the Motion "for a Trial on the [A]ssessment of [D]amages"

Because the Plaintiff is granted summary judgment on the issue of liability as to Contave and NYCTA, but not against the MTA and MABSTOA, this case cannot proceed to trial solely on the issue of damages as to all defendants. Moreover, it appears that there is open discovery, including but not limited to, the Plaintiff's deposition on the issue of damages in favor of Contave and NYCTA. The request for the scheduling of a trial on the issue of damages as to Contave and NYCTA is thus denied as premature.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the branch of the Plaintiff's motion for partial summary judgment on the issue of liability against Contave and NYCTA is granted; and it is further,

ORDERED, that branch of the Plaintiff's motion for partial summary judgment dismissing the affirmative defenses of comparative negligence, contributory negligence and culpable conduct that are interposed by Contave and NYCTA against the Plaintiff is granted; and it is further,

ORDERED, that the remaining branches of the Plaintiff's motion are denied, without prejudice and with leave to renew.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
August 15, 2022



MOJGAN C. LANCMAN, J.S.C.

