

Martin v Metropolitan Transp. Auth.

2023 NY Slip Op 31763(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 161301/2018

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 161301/2018

BARBARA MARTIN,

MOTION SEQ. NO. 004

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, GREG
PELLICANO, NEW YORK CITY TRANSIT AUTHORITY,
METRO TRANS AUTO, MABSTOA

DECISION AND ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for

PARTIAL SUMMARY JUDGMENT

For the reasons that follow, Plaintiff's motion seeking partial summary judgment is denied.

Background

This personal injury matter arises out of an accident between two vehicles. It is alleged that on July 26, 2018, Plaintiff, Barbara Martin's vehicle and Defendants, Metropolitan Transportation Authority, New York City Transit Authority, Metro Trans Auto, and MABSTOA's public bus, operated by Defendant Greg Pellicano, came into contact.

On December 3, 2018, Plaintiff commenced this negligence action. Plaintiff now post-note of issue refiles (the previous motion was denied with leave to re-file with a proper statement of material facts [NYSCEF Doc. 76]) and moves for summary judgment on the issue of liability pursuant to CPLR 3212. Defendants oppose.

Discussion

Pursuant to CPLR 3212 any party in any action, including a negligence action, may move for summary judgment upon joinder of issue (CPLR 3212 [a], *Andre v. Pomeroy*, 35 NY2d 361[1974]). The movant has the high burden of showing that there is no defense to the cause of action or that the cause of action or defense has no merit (CPLR 3212 [b]). In a negligence action the movant must meet his or her burden with evidence in admissible form demonstrating the absence of any material issues of fact (*see Calcano v. Rodriguez*, 91 AD 468 [1st Dept 2012]; *see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies this burden will the opposing papers be considered (*Alvarez*, 68 NY2d 320).

A party moving for summary judgment under the rear-end collision presumption, must first establish that his or her vehicle was stopped or coming to a stop when it was struck in the rear by another vehicle (see e.g., *Kalair v Fajerman*, 202 AD3d 625 [1st Dept 2022] citing *Urena v GVC Ltd.*, 160 AD3d 467[1st Dept 2018]). Once a rear-end vehicle collision has been established, a prima facie case of negligence is created against the rear vehicle driver, and it can only be rebutted with an adequate nonnegligent explanation for the accident (*id.*). Standing alone explanations such as the front driver came to a sudden stop or was changing lanes or minor inconsistencies in a plaintiff's examination before trial, will not suffice (*Rabayo v Ashaabdul*, 109 AD3d 892 [2nd Dept 2013]; *Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Here, in support, Plaintiff submits only the party depositions and an uncertified police report. Since the officer who prepared the report did not witness the accident, this Court will not consider any hearsay statement in the police report as evidence of how the accident happen (*see Kajoshaj v. Greenspan*, 88 AD2d 538 [1st Dept 1982]). Additionally, Plaintiff does not submit any photographs depicting the damage to her vehicle or any witness sworn affidavits despite testifying

that her husband took photographs at the scene and that her husband and her two children were inside the vehicle at the time of the accident. Thus, this Court is left with only the party depositions to evaluate and find that the testimonies are so contradicting that it appear that the parties are describing two different incidents.

For example, Plaintiff testified the accident occurred on a dry day with fair weather after exiting the Holland Tunnel. She further testified that she was stopped at a red light for an unknown period of time while waiting to make a right-hand turn when the accident happened. But she did not know the location of the accident, what roadway she was on or what direction she was traveling in. She further testified that she did not recall whether she was attempting to change lanes before she brought her vehicle to a stop. She also stated that she first observed the bus after the impact as the bus was merging into Plaintiff's left lane. Further, when Plaintiff was asked what part of Defendants' bus made contact with her vehicle, she did not know. In addition at the time of the accident, her husband and two children were also in the vehicle but no one else was injured including the passengers in the back seats. She also testified that she has 4 prior motor vehicle accident claims.

In contrast, bus operator Defendant Pellicano testified that the accident occurred on a rainy day and at the time of the accident he was using the bus headlights and windshield wipers. According to Defendant, the accident happened as he was making a left-hand turn on a green light from West Street onto Battery Place. He further testified that Plaintiff unexpectedly changed lanes, cutting off the bus as it was traveling through the intersection.

Thus, the testimony raises questions about the witnesses' credibility, where the accident happened, the weather conditions at the time of the accident, and whether the Plaintiff's vehicle was stopped or stopping at the time of the impact.

There are also questions of fact as to whether the impact was a "rear-end" impact or involved a sideswipe impact.

Plaintiff's papers assert that this was a rear-end collision. However, the Plaintiff did not know what part of the bus struck her vehicle. Defendant Pellicano describes the points of impact as between the corner of the front bumper of the bus and the corner of the rear driver's side bumper of Plaintiff's vehicle. Additionally, the Defendant's testimony that the bus travelled along the driver's side of Plaintiff's vehicle before the bus came to a stop, appears to describe a side-swipe collision. Plaintiff also testified that she first observed the bus along her driver's side. As per both Plaintiff and Defendant, when the bus came to a stop, it was not behind the Plaintiff's vehicle. As no other evidence concerning the points of impact has been submitted, including the alleged photographs taken by Plaintiff's husband, this Court has not been provided with admissible evidence establishing a rear-end collision.

Thus, without any other admissible evidence the parties' respective versions of this incident cannot be reconciled and raises questions of fact warranting denial of Plaintiff's motion. Accordingly, Plaintiff has not established entitlement to judgment as a matter of law and the motion is denied.

It is hereby,

ORDERED that the Plaintiff's motion for partial summary judgment on liability is denied.

5/23/2023
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

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