

Yasin v New York City Tr. Auth.

2023 NY Slip Op 33604(U)

October 12, 2023

Supreme Court, New York County

Docket Number: Index No. 162311/2019

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 21

Justice

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INDEX NO. 162311/2019

MOHAMMAD YASIN

MOTION SEQ. NO. 003

Plaintiff

- v -

NEW YORK CITY TRANSIT AUTHORITY, MTA BUS
COMPANY, METROPOLITAN TRANSPORTATION
AUTHORITY, MANHATTAN AND BRONX SURFACE
TRANSPORTATION OPERATING AUTHORITY, PAWEL
MATYSKIEL

**DECISION AND ORDER ON
MOTION**

Defendants

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 127, 130, 131, 132, 134, 135, 136, 137, 138, 139, 143, 150 were read on this motion to/for JUDGMENT - SUMMARY

For the reasons that follow and upon hearing oral arguments, Defendants' motion for summary judgment is granted.

Background

This personal injury action arises out of a collision between Defendant's public bus and Plaintiff's SUV vehicle. Plaintiff alleges that on July 20, 2019, at or about 6th Avenue and West 32nd Street in Manhattan, Defendants' bus came into contact with the rear of Plaintiff's vehicle.

Defendants now post note of issue moves for summary judgment pursuant to CPLR 3212, asserting that the sole proximate cause of the accident was Plaintiff's negligent driving which created an emergency situation for bus operator Matyskiel, who was unable to avoid making contact with Plaintiff's vehicle. Plaintiff opposes.

Discussion

It is well settled that the party moving for summary judgment has the high burden of establishing entitlement to judgment as a matter of law and dispelling any material questions of fact for a trial (CPLR 3212; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Regarding rear-end collisions, a legal presumption exists that rear drivers are negligent unless the rear driver has an adequate nonnegligent explanation for the accident (see *Kalair v Fajerman*, 202 AD3d 625 [1st Dept 2022]; *Urena v GVC Ltd.*, 160 AD3d 467[1st Dept 2018]; see also *Matos v. Sanchez*, 147 AD3d 585 [1st Dept 2017]). This presumption is based upon the legal expectation that drivers will drive in a reasonably prudent way and not follow another vehicle more closely than necessary to avoid collisions and prevent other dangers (see VTL 1129; *id.*).

In the context of a summary judgment motion, when the rear driver is the movant, and invokes the emergency doctrine defense as a nonnegligent explanation, the driver must establish that he or she was driving in a reasonably prudent way; was not trailing the front vehicle or following it closer than legally necessary; and yet was still faced with a sudden and unexpected circumstance that left little or no time for thought, deliberation or consideration, resulting in making a speedy decision without weighing alternative courses of conduct at the same it was a reasonable and prudent driving decision to make under the circumstances (see *Maisonet v Roman*, 139 AD3d 121 [1st Dept 2016]; *Rivera v. New York City Transit Auth.*, 77 N.Y.2d 322 [1991]; *Rodriguez v. New York City Transit Auth.*, 172 AD3d 508 [1st Dept 2019]; *Castillo v. New York City Transit Auth.*, 188 AD3d 484 [1st Dept 2020]; *Urquhart v. New York City Transit Auth.*, 85 NY2d 828 [1995]; *DeAngelis v Kirshner*, 171 AD2nd 593 [1st Dept 1991] *Fay v New York City Tr. Auth.*, 149 AD3d 593 [1st Dept 2017]; *Orsos v Hudson Tr. Corp.*, 111 AD3d 561 [1st Dept 2013]; see e.g. *Anderson v MTA*, 208 Ad3d 742 [2nd Dept 2022]).

While it is often a jury question whether a person's reaction to an emergency was reasonable, summary judgment may be granted when the moving party presents sufficient evidence to support the reasonableness of the actions, including evidence of authenticated video footage (see *Rodriguez*, 172 AD3d 508; *Ward v. Cox*, 38 AD3d 313 [1st Dept 2007]; see e.g. *Anderson*, 208 Ad3d 742 [2nd Dept 2022]).

Here, Defendants in support submit testimonial evidence, affidavits, and strongly rely upon the authenticated video from the bus. The video depicts footage from approximately 23:03:00 to 23:23:00 on July 20, 2019 from eight camera angles. The forward view camera recording shows that in the three blocks prior to the collision, the bus was lawfully traveling along 6th Avenue in its lane of traffic and its rate of speed did not exceed more than 20 mph. The bus does not change lanes nor veer from its lane. In the city block before the collision, at approximately 23:07:52, Plaintiff's vehicle, which was in front of the bus engages its right turning signal and without incident from the bus moves into the far-right lane. Both vehicles are now driving parallel to each other and as the vehicles approach the intersection of West 32nd Street, at approximately 23:08:03, Plaintiff again utilizing the right turning signal and begins to veer from its left into the bus lane again without incident. At approximately 23:08:05 Plaintiff's vehicle comes to an unexpected and improper stop at the crosswalk/ intersection with a green light, straddling both the far-right lane and the lane in which the bus is traveling in. The impact between the vehicles happens at this point at approximately 23:08:06:5. Thus, less than 2 seconds elapsed between the time Plaintiff's vehicle began to slow down and the time of the impact. During this time, Camera 9 shows the bus operator turning his head to his right where Plaintiff's vehicle is located and attempting to turn the bus towards the left to avoid the collision.

In addition, what is depicted in the video footage is further substantiated by the bus operator's affidavit. He states that he was unable to bring the bus to a stop to avoid the collision because there was not enough room between Plaintiff's vehicle and the bus. He further states that he could not move the bus to the left to avoid the collision because there were other vehicles to his left.

Upon review, while the impact to Plaintiff's vehicle occurred in the rear, the video evidence establishes that under these circumstances, Defendants were not negligent (*Maisonet*, 139 AD3d 121; *Rodriguez*, 172 AD3d 508; *Anderson*, 208 Ad3d 742). The video shows that the bus driver was operating prudently, was not trailing Plaintiff's vehicle and allowed sufficient room in front for Plaintiff to move from one lane to the next without incident. Yet Plaintiff's actions in straddling two lanes of traffic and coming to an unlawful stop in the crosswalk/intersection with a green light caused an emergency situation for the bus driver who reasonably acted under the circumstances in light of the ongoing traffic on a crowded city street with parked vehicle and yet was unable to avoid the collision.

Accordingly, Defendants' evidence establishes a prima facie showing that the emergency doctrine applies and that the bus operator acted reasonably and prudently under the circumstances. Further based on the video, this Court finds that Plaintiff's own negligent operation of his vehicle, by not first determining if he could change lanes and by not remaining in a single lane of traffic, and by coming to an unlawful stop at an intersection with a green light was the proximate cause of the collision (*see Cascante v. Kakay*, 88 AD3d 588 [1st Dept 2011]).

Further, in opposition, Plaintiff does not raise material questions of fact requiring a trial. (*Alvarez*, 68 NY2d 320). Plaintiff argues that summary judgment should not be granted. Plaintiff first argues that the motion is premature as the bus operator has not been deposed. Yet this

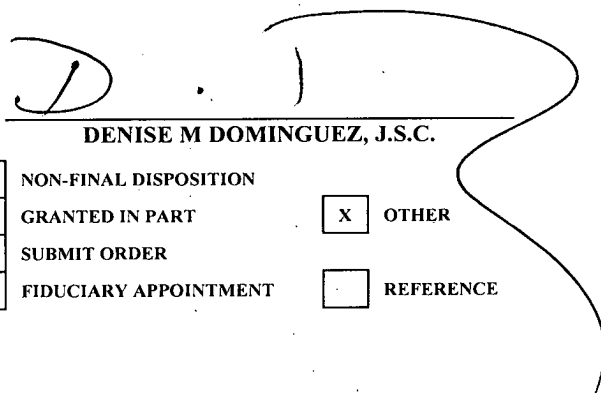
argument is unfounded since the bus operated appeared for a deposition on May 14, 2021, and the transcript was submitted for review and signature by Plaintiff on December 2, 2021. Plaintiff also argues that defense expert, A. Cornetto's Affidavit is improper because the certificate of conformity is not sufficient. This argument is also unavailing as such errors, if any, are minor and easily remedied per CPLR 2101(f) as the alleged defects do not substantially prejudice Plaintiff. Moreover, even if this Court disregarded the expert affidavit, based upon the video, it would reach the same conclusion. Nor has Plaintiff offered any admissible evidence challenging the authenticity of the video beyond speculations alleged in an attorney affirmation.¹

Accordingly, it is hereby

ORDERED that the Defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements; and it is further

ORDERED that the Defendants shall file and serve a copy of this order with notice of entry within 20 days in accordance with the electronic filing procedures.

10/12/2023
DATE



DENISE M DOMINGUEZ, J.S.C.

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

¹ Plaintiff had the opportunity to review the video footage for some time and has not presented this Court with admissible evidence challenging its authenticity. This Court would be remiss if it did not acknowledge that prior to discovery, Plaintiff filed a motion for summary judgment against Defendants asserting that the rear-end collision created a *prima facie* case of negligence (NYSCEF Doc. 12). The sole evidence Plaintiff relied upon was an affidavit by Plaintiff wherein he attested that he was stopped for approximately 5 seconds at a red light when he was struck from behind by the bus (NYSCEF Doc. 15). Upon the submission by TRANSIT of the video surveillance footage from the subject bus depicting the accident, which, at that time was only authenticated by an affidavit of the bus operator, Plaintiff withdrew his summary judgment motion (NYSCEF Doc. 31, 32, 35, 37).