

Cook v New York City Tr. Auth.
2023 NY Slip Op 33983(U)
November 8, 2023
Supreme Court, New York County
Docket Number: Index No. 450720/2021
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. 450720/2021

MICHEAL COOK

MOTION SEQ.
NO.003/004

Plaintiff

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY, MTA
BUS COMPANY, MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY, EDWARD D. DOUCE,
VICTOR M. BORREL and EMMANUEL VARGAS BORREL

**DECISION AND ORDER ON
MOTION**

Respondents

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Motion Seq. 3 and Motion Seq. 4 are consolidated in this decision.

For the reasons that follow, Plaintiff's motion seeking summary judgment on the issue of liability and striking all affirmative defenses of Plaintiff's contributory negligence and culpable conduct on the basis that he was an innocent passenger is granted.

The motion seeking summary judgment on multiple grounds by Defendants New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, bus operator, E. Douce, and Manhattan and Bronx Surface Transit Operating Authority (collectively Transit), is granted pursuant to the emergency doctrine.

Background

This personal injury matter arises out of an automobile collision between an MTA public bus and a motor vehicle owned by Defendant Victor M. Borrel (Borrel) and operated by Defendant Emmanuel Vargas Borrel (Vargas). Plaintiff a passenger on the MTA bus, alleges that on June 13,

2019, at about 2:20 p.m. at or about the intersection of West 125th Street and Amsterdam Avenue in Manhattan, he was injured as a result of the accident. Plaintiff specifically alleges that while seated in the MTA bus, the bus driver slammed on the brakes causing Plaintiff to jolt forward and strike his right knee and injure other parts of his body. On June 09, 2020, Plaintiff commenced this negligence action against the owners and drivers of the vehicles.

Transit's Summary Judgment Motion

Transit now post-note of issue, moves for summary judgment pursuant to CPLR 3212 on the grounds that Plaintiff did not suffer a serious injury and that Co-Defendants Vargas and Borrel caused the accident by violating Vehicle and Traffic Laws and creating an emergency situation by entering the bus's lane suddenly and without warning, causing Transit to apply the brakes in order to avoid a collision with Co-Defendant's vehicle.

Upon review, issues of fact exist as to whether Plaintiff suffered a serious injury (see decision and order, Motion Seq. 2). However, Transit with the authenticated bus video establishes its high burden of entitlement to judgment as a matter of law (*see* CPLR 3212; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Santana v. Metro. Transportation Co.*, 170 A.D.3d 551 [1st Dept 2019]; *Clayson v. Williams*, 203 AD3d 656, [1st Dept 2022]; see also *Rodriguez v. New York City Transit Auth.*, 172 AD3d 508 [1st Dept 2019]).

Here the bus video, shows the bus heading straight on the right lane on 125th Street as it approached Amsterdam Avenue. Contrary to Vargas's testimony, he suddenly and unexpectedly, entered directly into the bus's lane attempting to make a right-hand turn onto Amsterdam Avenue. Specifically, the video shows the bus driver waiting for a red light. Once the red light turned green, the bus driver proceeded to the intersection and waited for the vehicle in front of it to make a right turn, reaching a maximum speed of five miles per hour and then decelerating. The bus then slowly accelerated, moving between zero to five miles per hour, when Co-Defendants' vehicle came from

behind the bus, proceeding to drive around the bus and making a right hand turn from the left lane across the front of the bus, causing the bus driver to immediately apply the brakes in an attempt to prevent a full collision with Co-Defendants' vehicle.

Thus under these circumstances, this Court finds that Transit was prudently and properly driving, that Transit's action in applying the brakes to avoid a full crash with Co-Defendant's vehicle was reasonable based on the unforeseen and unexpected driving of Vargas which was the proximate cause of Plaintiff's injuries (*see Santana*, 170 A.D.3d 551; *Clayson*, 203 AD3d 656; *Rodriguez*, 172 AD3d 508; *Castillo v. New York City Transit Auth.*, 188 AD3d 484 [1st Dept 2020]; *Jones v New York City Tr. Auth.*, 162 AD3d 476 [1st Dept 2018]; *Urquhart v. New York City Transit Auth.*, 85 NY2d 828 [1995]; *Fay v New York City Tr. Auth.*, 149 AD3d 593 [1st Dept 2017]; *Orsos v Hudson Tr. Corp.*, 111 AD3d 561 [1st Dept 2013]).

In opposition, Co-Defendants and Plaintiff do not raise a material question of fact sufficient to rebut the video evidence and the bus driver's version of the incident, nor submit any admissible evidence showing that the bus driver created this situation or could have avoided the sudden use of the brakes (see e.g. *Santana-Lizardo v New York City Tr. Auth.*, 186 AD3d 1176 [1st Dept 2020]; *Bennett v New York City Tr. Auth.*, 212 AD3d 518 [1st Dept 2023]; *Brooks v New York City Tr. Auth.*, 19 AD3d 162, 162-163 [1st Dept 2005]).

Plaintiff's Motion for Summary Judgment

Plaintiff in Motion Seq. 3 moves for summary judgment on the issue of liability and striking all affirmative defenses of Plaintiff's contributory negligence and culpable conduct on the basis that he was an innocent passenger and that at least one of the Defendants is liable for Plaintiff's injuries.

Upon review, it is undisputed that Plaintiff was a passenger on the bus and was not at fault under any version of how the accident occurred (see *Hobbs v MTA Bus Co.*, 211 AD3d 471, 472 [1st Dept 2022]; *Mello v Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]). Further in light of the above finding that Transit was not negligent in their actions and that Vargas' driving was the cause of the accident, Plaintiff's motion seeking summary judgment on the issue of liability and striking affirmative defenses regarding Plaintiff's comparative negligence and culpable conduct is granted as to Defendants Vargas and Borrel (see *Campbell v Mincello*, 184 AD3d 412 [1st Dept 2020]; *Johnson v. Phillips*, 261 AD2d 269 [1st Dept 1999]; see e.g. *Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

ORDERED that Plaintiff's motion seeking summary judgment on the issue of liability and striking affirmative defenses of culpability is granted as to Defendants Vargas and Borrel; it is further ORDERED that the motion by Transit for summary judgment is granted and the complaint and any and all cross-claims are dismissed against them; it is further

ORDERED that the caption reflect the discontinuance against Transit; it further

ORDERED that the action is severed and the balance of the action shall continue; it is further ORDERED that the since Transit is no longer a party, the matter is transferred out of Part 21 to another IAS part; and it is further

ORDERED that Plaintiff (Motion Seq. 3) and Transit (Motion Seq. 4) file and serve a notice of entry of this Order within 30 days in accordance with electronic filing.

11/08/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

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REFERENCE

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