

De Polanco v Norris
2023 NY Slip Op 35294(U)
November 6, 2023
Supreme Court, Queens County
Docket Number: Index No. 714474/2022
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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LLIMY E. ROJAS DE POLANCO,

Plaintiff,

Index No.: 714474/2022

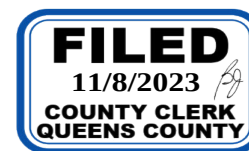
-against-

Motion Seq. No.: 2

PAUL NORRIS, NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSPORTATION
AUTHORITY d/b/a MTA, MTA BUS COMPANY and
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY,

Motion Date: 9.20.2023

Motion Cal. No.: 33

Defendants.
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The papers listed by NYSCEF Doc. Nos. 42-50 and 53-58 were read on the motion filed by the plaintiff, Llimy E. Rojas De Polanco (the "Plaintiff"), for an Order, *inter alia*, granting partial summary judgment on the issue of liability.

The Plaintiff filed this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the "Accident"). Presently before the Court is the Plaintiff's motion for summary judgment on the issue of liability and, in effect, to dismiss the affirmative defense of comparative negligence.

For the following reasons, the motion is granted as to the defendants Paul Norris ("Norris") and the New York City Transit Authority ("NYCTA"). The motion is denied as to the defendants Metropolitan Transportation Authority d/b/a MTA ("MTA"), MTA Bus Company ("MTA Bus") and Manhattan & Bronx Surface Transit Operating Authority ("MABSTOA"), and upon searching the record, the subject defendants are accorded summary judgment.

I. Factual Background

The Accident occurred on April 6, 2022 on Roosevelt Avenue at or near 111th Street, Queens, New York.

The Accident involved two vehicles. The Plaintiff's vehicle was parked. The other vehicle was a bus owned by NYCTA and operated by its employee Norris (*see* NYSCEF Doc. No. 8).

The Plaintiff's vehicle broke down on Roosevelt Avenue. As a result, the Plaintiff parked same in front of a bus stop on Roosevelt Avenue and 111th Street. The Plaintiff alleges that while

inside her parked vehicle, which had its hazard lights on, the bus operated by Norris sideswiped her vehicle.

In relevant part to the consideration of this motion, Norris testified as follows at his deposition:

Q.: Now could you have fully entered that bus stop area and brought your bus to a stop within the bus stop area after having passed that vehicle that was parked towards the back end of the bus stop?

A.: I was -- I was under the -- you know, like, assuming I could, but obviously, I couldn't.

Q.: Could you have brought your bus into the bus stop at some point just past, you know, the front left wheel well of that car that was parked in the bus stop?

A.: Well, yeah, I -- I was thinking it was going to, you know, make it in there without touching the car, obviously, 'cause I made the attempt. And it didn't work out in my favor, I guess you would say.

There is no factual dispute that the Plaintiff's vehicle was illegally parked in the front of the bus stop when the Accident occurred.

II. Discussion

A. Summary Judgment Principles

The familiar principles applicable to summary judgment motions are set forth below.

The “function of summary judgment is issue finding, not issue determination” (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the “drastic” remedy of summary judgment, the movant “must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or

to tender an acceptable excuse for the failure to do so (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

B. The Branch of the Motion Against Norris and NYCTA

The general legal principles applicable to accidents involving a parked vehicle are summarized below.

“Drivers are under a duty to maintain a reasonably safe rate of speed; have the automobile under reasonable control and to use reasonable care under the circumstances to avoid an accident” (*Oberman v Alexander’s-Rent-Car*, 56 AD2d 814, 814 [1st Dept 1977]) [citations omitted]). “A driver is required to see that which through proper use of [his or her] senses [he or she] should have seen” (*Vainer v DiSalvo*, 79 AD3d 1023, 1024 [2d Dept 2010]).

As a general rule, when it is established that a moving vehicle struck a parked vehicle, liability is imposed on the operator of the moving vehicle (*see State Farm Mutual Automobile Insurance Company v Novellino*, 176 AD3d 1134 [2d Dept 2019]; *Sieredzinski v McElroy*, 303 AD2d 575, 576 [2d Dept 2003]). In order to establish liability, a plaintiff must “prove[] that the negligence [of the moving vehicle] was the cause of the event which produced the harm” (*Wallace v Terrell*, 295 AD2d 840, 841 [3rd Dept 2002] [citation omitted]).

However, “[o]wners of illegally parked vehicles ... [that] create an unreasonable risk of harm to others must respond in damages to a party whose injury is proximately caused by the illegal conduct” (*Sullivan v Locastro*, 178 AD2d 523, 525 [2d Dept 1991]). Nonetheless, the mere fact that a vehicle is illegally parked “does not automatically establish that” it was “was the proximate cause of ... the injury” (*DeAngelis v Kirschner*, 171 AD2d 593, 594 [1st Dept 1991]).

The application of the foregoing principles and the case law discussed below requires the grant of summary judgment in the Plaintiff’s favor against Norris and NYCTA.

Although the Plaintiff’s vehicle was illegally parked in front of the bus stop, Norris and NYCTA fail to establish that the illegally parked vehicle was a proximate cause of the Accident (*see Sullivan v Locastro*, 178 AD2d 523). Even though the Plaintiff’s vehicle “was illegally parked at the time of the [A]ccident, the proximate cause of the [A]ccident was [Norris’] failure to control [his Bus] and to see that which, under the facts and circumstances, [Norris] should have seen by the proper use of [his] senses,” the Plaintiff’s parked vehicle (*Marsella v Sound Distributing Corp.*, 248 AD2d 683, 684 [2d Dept 1998]). Here, Norris testified, in essence, that he struck the Plaintiff’s vehicle because of a miscalculation: he thought he could enter lane in front of the bus stop without making contact with the Plaintiff’s parked vehicle.

Put another way, even though the Plaintiff’s vehicle was parked illegally, its location “merely furnished the condition or occasion for the occurrence of the event and was not one of its causes” (*Gerrity v Muthana*, 28 AD3d 1063, 1064 [4th Dept 2006]; *see Charles v Bagels by Bell, LTD.*, 203 AD3d 797 [2d Dept 2022]; *Lee v D. Daniels Contracting, LTD.*, 113 AD3d 824 [2d Dept 2014]); *Kantor v Met Transport Inc.*, 91 AD3d 525 [1st Dept 2012]).

In sum, Norris admitted seeing the Plaintiff's parked vehicle but nonetheless struck same. In light of the foregoing, the Plaintiff's illegally parked vehicle was not a proximate cause of the Accident (*see Marsella v Sound Distributing Corp.*, 248 AD2d 683).

Therefore, the Plaintiff is granted summary judgment against Norris and NYCTA, and their affirmative defense of comparative negligence is dismissed.

C. The Branches of the Motion as to the MTA, MTA Bus and MABSTOA

On a summary judgment motion, the Court is authorized to search the record and to grant summary judgment in favor of a non-moving party with respect to an issue before the Court (*see Dunham v Hilco Constr. Co.*, 89 NY2d 425 [1996]; *Federal Natl. Mtge. Assn. v Katz*, 33 AD3d 755 [2006]; *Murray v Murray*, 28 AD3d 624 [2006]; *Goldstein v County of Suffolk*, 300 AD2d 441 [2002]). Because the Plaintiff seeks summary judgment on the issue of liability against the MTA, MTA Bus and MABSTOA, the Court is authorized to grant summary judgment on this issue to said non-moving defendants.

“[T]he functions of the MTA with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility” (*Delacruz v Metropolitan Transp. Authority*, 45 AD3d 482, 483 [1st Dept 2007]) [internal quotation marks and citations omitted]).

Furthermore, it is well-established that the MTA “... is not vicariously liable for the torts of its subsidiaries” (*Fridman v New York City Tr. Auth.*, 131 AD3d 1202, 1203 [2d Dept 2015] [citations omitted]). NYCTA is a subsidiary of the MTA; thus, the MTA cannot be held vicariously liable for torts committed by NYCTA (*see Public Authorities Law* § 1266 [5]; *Brunson v City of New York*, 150 AD3d 1189 [2d Dept 2017]; *Fridman v New York City Tr. Auth.*, 131 AD3d 1202; *Mayayev v Metropolitan Transp. Auth. Bus*, 74 AD3d 910, 911 [2d Dept 2010]; *Rampersaud v Metropolitan Transp. Auth. of the State of N.Y.*, 73 AD3d 888 [2d Dept 2010]; *Emerick v Metropolitan Transp. Auth.*, 272 AD2d 150 [2d Dept 2000]).

VTL § 388 states, in relevant part, as follows: “[e]very 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 record establishes that on the date of the Accident: (1) neither MTA Bus nor MABSTOA owned, operated, controlled, or maintained the bus that Norris was operating; and (2) that Norris was not an employee, agent or servant of MTA Bus or MABSTOA. The subject defendants are thus entitled to summary judgment (*see Brunson v City of New York*, 150 AD3d 1189; *Fridman v New York City Tr. Auth.*, 131 AD3d 1202; *Woods v Craig*, 41 AD3d 1260 [4th Dept 2007]; *Peele v Manhattan & Bronx Surface Tr. Operating Auth.*, 160 AD2d 602 [1st Dept 1990]).

For the foregoing reasons, the Plaintiff's motion as to the MTA, MTA Bus and MABSTOA is denied, and the subject defendants are granted summary judgment dismissing the complaint.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Plaintiff's motion is granted in part and denied in part; and it is further,

ORDERED, that the Plaintiff is granted partial summary judgment on the issue of liability against Norris and NYCTA; and it is further,

ORDERED, that the affirmative defense of comparative negligence asserted by Norris and NYCTA is dismissed; and it is further,

ORDERED, that the Plaintiff's motion is denied as to the MTA, MTA Bus and MABSTOA; and it is further,

ORDERED, that the MTA, MTA Bus and MABSTOA are granted summary judgment dismissing the plaintiff's complaint insofar as asserted against them.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York

November 6, 2023



MOJGAN C. LANCMAN, J.S.C.

