

Paul v Maggies Paratransit Corp.

2024 NY Slip Op 34974(U)

March 19, 2024

Supreme Court, Bronx County

Docket Number: Index No. 31046/2020E

Judge: Patsy Gouldborne

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - COUNTY OF BRONX

C
E#002

PART 13

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

-----X

Arun Paul,

Plaintiff

Index No. 31046/2020E

-against-

Hon. _____

Maggies Paratransit Corp, et al

Defendants

Justice.

-----X

Seq # 2

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	See	Annexed
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Motion sequence #2 is granted in part in accordance with the Decision and Order dated March 19, 2024.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 3, 19, 2024

Hon. Patsy Houlch
J.S.C.

NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 13

-----X

ARUN PAUL,

Plaintiff(s),

- against -

Index No. 31046/2020E

Hon. PATSY GOULDBORNE
Justice of the Supreme Court

MAGGIES PARATRANSIT CORP., NEW YORK
CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, and JOSE L.
SALCEDO,

Defendant(s).

-----X

The following papers were read on this motion (Seq. No. 2) for SUMMARY JUDGMENT noticed and submitted on May 30, 2023

Table with 2 columns: Sequence No., NYSCEF Doc. Nos.
Rows include: Notice of Motion – Exhibits and Affidavits Annexed (29-39), Cross Motion – Exhibits and Affidavits Annexed, Answering Affidavit and Exhibits, Memorandum of Law (56-61), Reply Affidavit (62)

Upon the foregoing papers, the plaintiff Arun Paul ("Plaintiff") moves for an order pursuant to CPLR 3212 (1) awarding partial summary judgment on the issue of liability, and/or (2) striking the first and second affirmative defenses alleging contributory negligence and assumption of risk/seatbelt defenses, as pled in the defendants' Verified Answer, and/or (3) for such other and further relief as this Court deems just and proper. The defendants Maggies Paratransit Corp. ("Maggies"), New York City Transit Authority ("Transit"), Metropolitan Transportation Authority ("MTA"), and Jose L. Salcedo ("Salcedo") (collectively, "Defendants") oppose the motion.

This matter arises out of an alleged rear-end motor vehicle accident that occurred on September 30, 2019, between a vehicle operated by Plaintiff and another vehicle operated by Salcedo and owned/leased by Defendants. In support of the motion, Plaintiff submits, inter alia, his affidavit, a transcript of his testimony following a hearing held pursuant to General Municipal Law §50-h, Salcedo's deposition transcript, and a police accident report. In opposition to the motion, Defendants submit his deposition transcript and Plaintiff's deposition transcript.

At the outset, Plaintiff's motion is denied insofar as it seeks summary judgment on the issue of liability against MTA and Transit. This court awarded summary judgment to those defendants on the ground

that they are protected by the Graves Amendment (49 USC §30106) (see Decision and Order resolving motion sequence #3). The remaining issues are whether Plaintiff is entitled to summary judgment against Salcedo and Maggies (hereinafter “Salcedo Defendants”) on the issue of their liability, and an order striking Defendants’ first and second affirmative defenses.¹

“It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept. 2010] citing *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept. 2001]; see also *Dattilo v Best Transp. Inc* 79 AD3d 432 [1st Dept. 2010]).

In this case, Plaintiff failed to carry his initial summary judgment burden on the issue of Salcedo Defendants’ liability or his lack of comparative fault, because his moving papers reveal conflicting versions of how this accident occurred. Plaintiff affirmed in an affidavit and at deposition that he had come to a gradual stop for a red light for about 1-2 seconds when he was struck in the rear by Defendants’ vehicle. Salcedo, on the other hand, testified that he was traveling in the rightmost lane of Sixth Avenue at 15-18 miles per hour between 10th and 11th Street when Plaintiff’s vehicle moved from the left and entered his lane without signaling. While Salcedo applied the brakes, he struck Plaintiff’s vehicle in the rear while it was still moving.

Salcedo initially denied knowing how long Plaintiff’s vehicle was in his lane prior to the contact (Salcedo deposition tr at 40), but when pressed, he testified that it was “[m]aybe – I don’t know – ten seconds, five seconds. I can’t recall” (*id.* at 41), and then guessed it was “ten seconds” (*id.*). Salcedo, however, also testified that Plaintiff’s lane change was “too fast for [him] to react” and it “was so fast that [he] didn’t have no time to react,” and despite applying the brakes, the contact occurred (*id.* at 39-40; 44). When viewing the testimony in a light most favorable to the nonmovants (*Vega v Restaino Cost. Corp.*, 18 NY3d 499, 503 [2012]; *Medina-Ortiz v Seda*, 157 AD3d 499 [1st Dept 2018]), there is an issue of fact as to whether Plaintiff’s improper lane change caused the accident (*Morris v Green*, Sup Ct, Bronx County, May 10, 2017, Montano, J., index No. 301445/2015, *aff’d*, 156 AD3d 540 [1st Dept 2017])[issues of fact precluded summary judgment in favor of front vehicle driver where the rear-ending vehicle driver testified that front vehicle merged into his lane and approximately five to seven seconds elapsed from the time he first observed brake lights until the moment of impact]; see also *Jeffrey v DeJesus*, 116 AD3d 574, 575 [1st Dept 2014]; *Jimenez*

¹ Plaintiff’s notice of motion seeks an order striking the affirmative defense alleging “assumption of risk” but no such defense is pleaded in Defendants’ answer (NYSCEF Doc.#36).

v Greyhound Lines, Inc., 193 AD3d 548 [1st Dept 2021]). The allegedly inconsistent statement attributed to Salcedo in the police accident report “is not conclusive but raises an issue of credibility to be resolved by the factfinder” (*Jeffrey*, 116 AD3d at 575; *see also Matter of Jameiko A.*, 194 AD2d 340 [1st Dept 1993]).

Contrary to Plaintiff’s contentions, Salcedo’s deposition transcript is admissible. The transcript is attached as an exhibit to Plaintiff’s moving papers, and although it is unsigned, it is certified by the reporter and Plaintiff does not challenge its accuracy (*Tsai Chung Chao v Chao*, 161 AD3d 564, 564 [1st Dept 2018]; *Arthur v Liberty Mutual Auto and Home Services, LLC*, 169 AD3d 564 [1st Dept 2019]).

Plaintiff, however, established entitlement to dismissal of Defendants’ second affirmative defense. Plaintiff testified that he was wearing his seat belt at the time of the accident, and Defendants submit no evidence raising a triable issue of fact.

Accordingly, it is hereby

ORDERED, that Plaintiff’s motion for summary judgment on the issue of liability, and for an order striking Defendants’ first affirmative defense, is denied, and it is further,

ORDERED, that Plaintiff’s motion for an order striking Defendants’ second affirmative defense is granted, and that defense is stricken.

This constitutes the Decision and Order of this Court.

Dated: March 19, 2024

Hon. 
PATSY GOULDBORNE, J.S.C.

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- | | | |
|------------------------------|--|---|
| 1. CHECK ONE..... | <input type="checkbox"/> CASE DISPOSED IN ITS ENTIRETY | <input checked="" type="checkbox"/> CASE STILL ACTIVE |
| 2. MOTION IS..... | <input type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED |
| 3. CHECK IF APPROPRIATE..... | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFEREE APPOINTMENT |
| | <input type="checkbox"/> GRANTED IN PART | <input type="checkbox"/> OTHER |
| | <input type="checkbox"/> SCHEDULE APPEARANCE | |