

Downer v Ford

2024 NY Slip Op 35041(U)

July 30, 2024

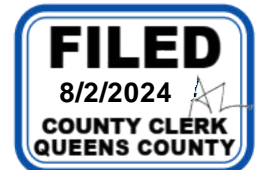
Supreme Court, Queens County

Docket Number: Index No. 724765/2020

Judge: Mojgan C. Lancman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

-----x
AVON DOWNER and EUDINA BOODIE,

Plaintiffs,

-against-

KEVIN FORD, NEW YORK CITY TRANSIT AUTHORITY
and METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.
-----x

IAS PART 20

Index No.: 724765/2020

Motion Seq. No.: 1

Motion Date: 3.20.2024

Motion Cal. No.: 13

The papers bearing NYSCEF Doc. Nos. 23-60 were read on the motion filed by the defendants, Kevin Ford (“Ford”), New York City Transit Authority (“NYCTA”) and Metropolitan Transportation Authority (“MTA”) (collectively, the “Defendants”), for summary judgment.

The plaintiffs, Avon Downer (“Downer”) and Eudina Boogie (“Boogie”) (collectively, the “Plaintiffs”), filed this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the “Accident”). The Plaintiffs allege that they were injured when a bus operated by Ford and owned by NYCTA came to a sudden stop. Presently before the Court is the Defendants’ motion for summary judgment dismissing the complaint. For the following reasons, the motion is granted.

I. Factual Background

The Accident occurred on November 25, 2019 at approximately 6:58 a.m. The Plaintiffs were passengers in a NYCTA bus, bearing number 8663, which Ford operated in the course of his employment with NYCTA. The Accident occurred on Murdock Avenue at or near its intersection with 205th Street in Queens, New York. The Plaintiffs allege that they were injured because the bus came to a sudden stop.

The bus at issue was equipped with a video recording system. The Defendants submit the video (the “Video”) from the subject recording system in support of this motion. The Video, which has been properly authenticated, captures the events leading up to the Accident and the Accident itself. The Video eliminates any triable issues of fact (*see Pappas v New York City Transit Authority*, 208 AD3d 890 [2d Dept 2022]).

The Video reveals the following: that prior to the Accident, Ford was operating the bus on Murdock Avenue; that as the bus approached the intersection of Murdock Avenue and 205th Street, a silver car was stopped at the stop sign on 205th Street; that the silver car was to the left of the bus; that there were no traffic control devices for the bus at the subject intersection; that as the bus

proceeded towards the intersection, the silver car suddenly traveled through the stop sign and entered the intersection directly in front of the bus; that Ford applied the brakes of the bus; and that Ford was thus successful in avoiding contact with the silver car. The Plaintiffs allege that the sudden stop of the bus caused Downer to fall to the floor and Boodie to fall forward into a metal divider.

The Video also reflects the following: that at 6:58:35 a.m., as the bus approached 205th Street, the silver car was stopped at the stop sign on 205th Street; that there were no traffic control devices for vehicles traveling on Murdock Avenue at its intersection with 205th Street; that at 6:58:36 a.m., the silver car traveled through the stop sign and entered the intersection, directly in front of the bus; that at 6:58:37 a.m., the bus begins to stop as the silver car was traveling through the intersection in front of the bus; and that the bus subsequently came to a complete stop.

Ford testified that approximately two seconds passed from when he first saw the silver car to when he applied his brakes. The silver car left the scene of the Accident; thus, its owner and operator have never been identified.

II. Discussion

A. The MTA's Application for Summary Judgment

Preliminarily, "... the 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]).

The MTA and NYCTA are separate public benefit corporations with different functions (*see Fridman v New York City Transit Authority*, 131 AD3d 1202 [2d Dept 2015]). The MTA "... is not vicariously liable for the torts of its subsidiaries" (*see id.*) [citations omitted]). The MTA and its subsidiaries, including NYCTA, are to be sued separately and are not responsible for one another's torts (*see Mayayev v Metropolitan Transp. Authority Bus*, 74 AD3d 910 [2d Dept 2010]).

The bus implicated in the accident was owned and operated by NYCTA. Accordingly, the MTA cannot be held liable in this cause. The complaint is thus dismissed as to the MTA (*see Delacruz v Metropolitan Transp. Authority*, 45 AD3d 482; *Fridman v New York City Transit Authority*, 131 AD3d 1202; *Mayayev v Metropolitan Transp. Authority Bus*, 74 AD3d 910).

B. NYCTA's and Ford's Application for Summary Judgment

Vehicle and Traffic Law § 1142 [a] states:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

Vehicle and Traffic Law § 1172 [a] provides:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is not crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

“As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign in violation of Vehicle and Traffic Law § 1142 [a] is negligent as a matter of law” (*Belle-Fleur v Desriviere*, 178 AD3d 993, 995 [2d Dept 2019] [citations omitted]).

The case of *De Pina v Jerrick Associates, Inc.*, 216 AD3d 934, 934-935 [2d Dept 2023], is controlling: “[a] defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident. Pursuant to Vehicle and Traffic Law § 1142 [a], a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard. A driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws that require them to yield. Further, although a driver with a right-of-way ... has a duty to use reasonable care to avoid a collision, ... a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” [internal quotation marks, citations and brackets omitted].

NYCTA and Ford establish, *prima facie*, entitlement to summary judgment for various reasons.

First, Ford had the right of way because there was no traffic control device at the intersection at issue in his direction of travel and there was a stop sign at the intersection in the direction of travel of the silver car (*see* Vehicle and Traffic Law § 1142 [a]; Vehicle and Traffic Law § 1172 [a]).

Second, through the Video, NYCTA and Ford establish that the operator of the silver vehicle was negligent as a matter of law because he failed to yield the right of way to the bus Ford was operating (*De Pina v Jerrick Associates, Inc.*, 216 AD3d 934).

Third, NYCTA and Ford establish that the negligence of the operator of the silver car is the sole proximate cause of the Accident (*see id.*).

Fourth, Ford, as the “driver who ha[d] the right-of-way [was] entitled to anticipate that other driver[] w[ould] obey traffic laws that require [him or her] to yield” (*Skeldon v Faessler*, 219 AD3d 851, 854 [2d Dept 2023] [citation omitted]).

Fifth, the submissions of NYCTA and Ford, including the Video “demonstrate[] *prima facie*, that ... [the operator of the silver car] violated Vehicle and Traffic Law § 1142 [a] by failing to yield the right-of-way to the [bus] in the intersection after facing a stop sign, while ... [the bus] faced no traffic control device at the intersection” (*see id.*).

Sixth and lastly, NYCTA and Ford are entitled to summary disposition on the basis of the emergency doctrine. “The emergency doctrine provides that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context. Both the existence of an emergency and the reasonableness of a party's response thereto will ordinarily present questions of fact. Summary judgment is appropriate, however, when a party presents sufficient evidence demonstrating “the existence of an emergency, as well as the reasonableness of the actor’s response to it” (*Pappas v New York City Transit Authority*, 208 AD3d 890, 891 [citations omitted]). Here, the Video demonstrates that the silver vehicle suddenly and abruptly entered the intersection; that Ford was confronted with an emergency that was not of his own making; that Ford had the right of way; that Ford had, at most, seconds to react to the silver car; and that the only opportunity to avoid the Accident was to come to a sudden stop.

In opposition, the Plaintiffs fail to raise triable issues of fact and their legal arguments are without merit.

There are no issues of fact in light of the properly authenticated Video (*see id.*).

Since Ford had, at most, seconds to react to the silver car’s movement through the intersection, he cannot be held negligent (*see De Pina v Jerrick Associates, Inc.*, 216 AD3d 934).

“In opposition, [P]laintiffs fail[] to submit any evidence tending to show that ... [Ford] created the emergency or could have avoided a collision by taking a different action other than applying the brakes ... The undisputed evidence demonstrates that ... [Ford] was required to take immediate action to avoid striking the vehicle and that braking with sufficient force to prevent an accident was a reasonable response to the emergency” (*see Febres v Metropolitan Transp. Auth.*, 220 AD3d 462, 462 [1st Dept 2023]).

The Plaintiffs’ argument that Ford was speeding by travelling at 27 m.p.h. before the Accident lacks merit. The speed limit in New York City is 25 m.p.h. unless otherwise posted. The Plaintiffs do not submit any evidence in admissible form as to the speed limit at the location of the Accident.

Lastly, even if Ford had been traveling at 27 m.p.h. when he first observed the silver car and, in an area, where the speed limit was 25 m.p.h., the sole proximate cause of the Accident was the silver car. Here, the Video supports the conclusion that to avoid the collision with the silver car, a sudden stop would have been necessary even if Ford had been traveling at 25 m.p.h. (*see Lucksinger v Hatch*, 280 AD2d 741 [3d Dept 2001]). Put another way, the Plaintiffs’ contention that, in effect, the Accident could have been avoided if Ford had been traveling at 25 m.p.h. or that

the speed of the bus somehow contributed to the Accident is speculative and, on this record, fails to raise a triable issue of fact (*see Gallagher v McCurdy*, 85 AD3d 1109 [2d Dept 2011]). The Video demonstrates that Ford had, at most, seconds to react and that the movement of the silver car required him to bring the bus to a sudden stop to avoid colliding with the silver car (*see Febres v Metropolitan Transp. Auth.*, 220 AD3d 462).

III. Conclusion

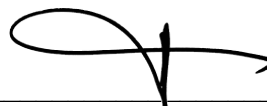
For the reasons stated above, it is hereby:

ORDERED, that the Defendants' summary judgment motion is granted and the Plaintiffs' complaint is dismissed; and it is further,

ORDERED, that the Defendants shall serve a copy of this Order with Notice of Entry upon the Plaintiffs via NYSCEF by August 30, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
July 30, 2024



MOJGAN C. LANCMAN, J.S.C.

