

<b>Wright v Hoyt Transp. Corp.</b>
2024 NY Slip Op 35182(U)
September 4, 2024
Supreme Court, Bronx County
Docket Number: Index No. 815358/2022E
Judge: Ashlee Crawford
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 21

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OTIS R. WRIGHT,

Plaintiff,

-against-

**DECISION AND ORDER  
ON MOTION**

**Index No. 815358/2022E  
Motion Seq. No. 001**

HOYT TRANSPORTATION CORP. and  
ELIZABETH M. RODRIGUEZ,

Defendants.

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**ASHLEE CRAWFORD, J.:**

In this pedestrian knock-down action, plaintiff moves for partial summary judgment as to liability on his claims for violation of Vehicle and Traffic Law § 1146 and New York City Traffic Rules §§ 4-02(c) and 4-04(d). For the reasons discussed herein, summary judgment is denied.

On December 10, 2021, plaintiff Otis R. Wright was making a delivery on Spofford Avenue, near the intersection of Tiffany Street and Lafayette Street, when defendants' vehicle – a 2011 Chevrolet bus owned by defendant Hoyt Transportation Corp. and driven by defendant Elizabeth M. Rodriguez – struck him in the roadway. Plaintiff claims he sustained a fracture to his left foot, requiring surgery (Plaintiff's Affid. ¶¶ 2, 4, 6; Rodriguez Affid. ¶¶ 2-4).

The parties present differing accounts of the cause of the accident. In support, plaintiff states that after stepping down from the rear of his delivery truck and into the roadway, he

looked in all directions, and did not see or hear any vehicles coming toward him prior to the collision (Plaintiff's Affid. ¶ 5).

In opposition, Rodriguez states that as she crossed Tiffany Street, she observed a double-parked box truck in the traveling lane of Spofford Avenue; plaintiff was standing in the street, near the rear of the truck, looking at his phone (Rodriguez Affid. ¶¶ 6-7). Seeing sufficient room to pass the truck and plaintiff, Rodriguez proceeded past plaintiff at no more than five (5) miles per hour (*id.* at ¶¶ 8-9). Plaintiff then suddenly stepped out from the back of the truck, further into the roadway, and the hood of his jacket or sweatshirt was caught on the bus's passenger side view mirror. Rodriguez states there was no other contact between the bus and plaintiff, and that the incident was caused by plaintiff being distracted by his phone (*id.* at ¶¶ 9-11).

Plaintiff argues that he has met his burden on summary judgment by establishing that the sole proximate cause of the accident was defendants' failure to yield the right of way to a pedestrian and failure to observe what there was to see in the roadway. He further argues that Rodriguez breached her statutory duty to exercise due care to plaintiff, a pedestrian (Affirm. in Support ¶¶ 13-17; *see* VTL § 1146 ["every driver of a vehicle shall exercise due care to avoid colliding with any . . . pedestrian . . . upon any roadway"]; 34 RCNY §§ 4-02 [c] ["No person shall operate a vehicle in a manner that will endanger any person or property"], 4-04 [d] ["the operator of a vehicle shall exercise due care to avoid colliding with any pedestrian"]).

Defendants insist on the denial of summary judgment, as necessary discovery has not been exchanged and no depositions have been held (Memo. of Law in Opp. at 7). They contend that any injuries sustained by plaintiff were the result of his own negligence in failing to notice defendants' vehicle and being distracted on his phone at the time of the incident.

A party seeking summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (*id.*). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (*Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

The Court finds that plaintiff has not met his *prima facie* burden as against the owner of the bus, defendant Hoyt Transportation Corp. While, in his complaint, plaintiff pleads a claim against Hoyt for violation of Vehicle and Traffic Law § 388 (“Negligence in use or operation of vehicle attributable to owner”), he has not moved for summary judgment on this claim or any other claim directed to Hoyt (*see* Perez Affirm. at ¶¶ 12-26; Notice of Motion; *cf. Dong v Cruz-Marte*, 223 AD3d 463 [1st Dept 2024]).

With respect to defendant Rodriguez, plaintiff has met his *prima facie* burden on his claims for violation of Vehicle and Traffic Law § 1146 and New York City Traffic Rules §§ 4-02(c) and 4-04(d), but Rodriguez raises a triable issue of fact as to whether she was negligent for failing to exercise due care in operating the bus (*see Verna v Little Richie Bus Service Inc.*, 223 AD3d 505 [1st Dept 2024][VTL § 1146]; *Dong v Cruz-Marte*, 223 AD3d at 463 [VTL § 1146]).

Based upon all the foregoing, it is hereby

**ORDERED** that plaintiff’s motion for partial summary judgment as to liability is DENIED; and it is further

**ORDERED** that the parties shall appear for a compliance conference on October 16, 2024, at 9:30 AM.

This constitutes the decision and order of the Court.



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**HON. ASHLEE CRAWFORD, A.J.S.C.**

Dated: Bronx, New York  
September 4, 2024