

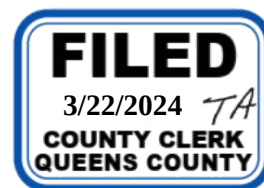
Bonilla v New York City Tr. Auth.
2024 NY Slip Op 35334(U)
March 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 714535/2023
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

IAS Part 20

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CARLOS DAVID RAMIREZ BONILLA,

Index No.: 714535/2023

Plaintiff,

Motion Seq. No.: 1

-against-

Motion Date: 11.8.2023

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY
and RAMON RODRIGUEZ,

Motion Cal. No.: 37

Defendants.
-----X

The papers listed by NYSCEF Doc. Nos. 37-48, 60 and 62-72 were read on the motion filed by the plaintiff, Carlos David Ramirez Bonilla (the "Plaintiff"), for an Order, *inter alia*, granting him 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: (1) for partial summary judgment on the issue of liability against the defendants; and (2) to strike the defendants' affirmative defenses of culpable conduct and the emergency doctrine.

For the following reasons, the motion is granted as against the New York City Transit Authority ("NYCTA") and Ramon Rodriguez ("Rodriguez") (collectively, the "NYCTA Defendants"). The motion is denied as to the defendant Metropolitan Transportation Authority ("MTA"), and upon searching the record, the subject defendant is accorded summary judgment.

I. Factual Background

The Accident occurred on November 4, 2021 in front of 92-08 Jamaica Avenue, Queens, New York.

The Accident involved two vehicles. The Plaintiff's vehicle, a sedan, was parked. The other vehicle was a bus owned by NYCTA and operated by Rodriguez, one of its employees.

The Plaintiff avers as follows in his affidavit in support:

[The] Defendants' Vehicle struck the rear and the driver's side portion of my vehicle. Defendants' Vehicle also broke off the side mirror on the driver side of my vehicle. There were multiple impacts to my parked vehicle.

There was nothing I could do to avoid this accident, and I was legally parked in the parking lane for approximately eight (8) minutes until Defendants' Vehicle unexpectedly struck my vehicle. My vehicle was rear-ended and side-swiped solely due to the negligence of Defendant Ramon Rodriguez in his operation of the Defendants' Vehicle.

In opposition, the Transit Defendants submit, *inter alia*, an affidavit from Rodriguez. He avers, in effect, that the Plaintiff's vehicle was illegally parked and that the collision between the vehicles resulted in a scuff mark to the driver's side rear view mirror of the Plaintiff's vehicle.

In Rodriguez's words:

At the time of the incident, I was attempting to pull the bus out of a bus stop along Jamaica Avenue. Parked ahead of the bus was ... [the] Plaintiff's Vehicle. As I attempted to navigate around plaintiff's car ... the bus was slowly pulling away from the stop and entering the lane of travel on Jamaica Avenue ... I then also gradually began moving forward and turning the front of the bus, from right to left, into the lane of travel on Jamaica Avenue and attempted to turn the front of the bus out wide enough to the left, so the right side rear of the bus would clear plaintiff's vehicle.

Then, as I continued to proceed forward into the lane of travel on Jamaica Avenue, I observed through the bus's right side (door side) exterior rear-view mirror that there was not enough room for the rear of the bus to pass plaintiff's vehicle because of how it was parked sticking out from the curb and into the lane of travel, so I brought the bus to a stop ... Plaintiff's parking of his vehicle at this location obstructed the lane of travel and was a cause of the subject contact. I did not feel any contact or impact while I was pulling out or upon bringing the bus to a stop. However, I did observe that the rear side of the bus was in contact with the edge of the left side rear view mirror of plaintiff's vehicle.

The bus Rodriguez was operating was equipped with various video cameras. The NYCTA Defendants have submitted the full "Bus Camera Video" (the "Video") in support of this motion. However, there is no footage of the "multiple impacts" that the Plaintiff alleges or the contact that Rodriguez alleges. In other words, the Video does not capture the Accident itself.

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" (*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 Branches of the Motion Against the Transit Defendants

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]). 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 requires the grant of summary judgment on the issue of liability in the Plaintiff’s favor against the Transit Defendants.

The Plaintiff contends that his vehicle was parked at the time of the Accident. In opposition, the Transit Defendants assert that the Plaintiff's vehicle was parked in violation of VTL § 1203 [a] because it was beyond 12 inches from the right-hand curb. Assuming that this argument is factually correct, it nonetheless fails because the Transit Defendants fail to establish that the Plaintiff's illegally parked vehicle was a proximate cause of the Accident (*see Sullivan v Locastro*, 178 AD2d 523).

Here, even if the Plaintiff's vehicle "was illegally parked at the time of the [A]ccident, the proximate cause of the [A]ccident was [Rodriguez's] failure to control [his Bus] and to see that which, under the facts and circumstances, [Rodriguez] should have seen by the proper use of [his] senses" (*Marsella v Sound Distributing Corp.*, 248 AD2d 683, 684 [2d Dept 1998]). Rodriguez's affidavit admits that he saw the Plaintiff's parked vehicle before the Accident and that he attempted to go around it. Rodriguez was unsuccessful in doing so because, in his words, he "... observe[d] that the rear side of the bus was in contact with the edge of the left side rear view mirror of plaintiff's vehicle."

Put another way, even if 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, Rodriguez admits seeing the Plaintiff's parked vehicle before the Accident, but nonetheless struck same. Thus, even if the Plaintiff's vehicle had been illegally parked, this was not a proximate cause of the Accident (*see Marsella v Sound Distributing Corp.*, 248 AD2d 683).

The Transit Defendants' contentions relative to the Plaintiff's credibility are insufficient to deny the motion. Here, they contend that the Plaintiff's allegation that there were four impacts between the bus and his vehicle is false. This argument is doomed by Rodriguez's admission that there was contact between the bus, which was moving, and the Plaintiff's vehicle, which was parked. This is sufficient to warrant summary judgment in the Plaintiff's favor, making it unnecessary to determine for the purposes of summary judgment if there were other impacts between the vehicles.

The Transit Defendants' contention that the Accident took place when the Plaintiff opened the door to his car is unsupported by the record. Here, Rodriguez makes no such allegation in his affidavit, instead conceding that the "rear side of the bus was in contact with the edge of the left side rear view mirror of plaintiff's vehicle."

The next issue presented for consideration is whether the Plaintiff is entitled to dismissal of the Transit Defendants' affirmative defense of culpable conduct. This issue is properly before the Court because: "[e]ven though a plaintiff is no longer required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant's

affirmative defense of comparative negligence” (*Hai Ying Xiao v Martinez*, 185 AD3d 1014, 1014 [2d Dept 2020]; *see also Ng v West*, 195 AD3d 1006 [2d Dept 2021]) [citations omitted]).

Furthermore, CPLR § 3212 [g] “... permits a motion court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action. The provision recognizes that, notwithstanding the denial or partial grant, one of several facts may nonetheless appear to be conceded or otherwise definitively resolved by the moving and opposing papers” (*see Oluwatayo v Dulinayan*, 142 AD3d 113, 118 [1st Dept 2016])

The record demonstrates that the Plaintiff’s vehicle was parked at the time of the Accident and that the bus Rodriguez was operating struck same. Thus, as the Plaintiff establishes that he was not negligent and the Transit Defendants fail to submit evidence in admissible form relative to the Plaintiff’s fault for the happening of the Accident, the affirmative defense of culpable conduct is dismissed.

The Plaintiff is also entitled to dismissal of the emergency doctrine affirmative defense. “The emergency doctrine does not apply where the party seeking to invoke it created or contributed to the emergency” (*Donnellan v LaMarche*, 221 AD3d 783, 784 [2d Dept 2023] [citations omitted]). Here, the emergency doctrine is inapplicable since the bus operated by Rodriguez struck the Plaintiff’s parked vehicle.

The Transit Defendants’ remaining opposition contentions are without merit.

The Plaintiff is therefore granted summary judgment on the issue of liability against the Transit Defendants, and their affirmative defenses of comparative negligence and the emergency doctrine are dismissed.

The Court notes that although the Plaintiff is granted summary judgment on the issue of liability against the Transit Defendants, they are entitled to discovery on the issue of damages (*see Barr v Raffe*, 96 AD2d 800 [1st Dept 1983]), and the Plaintiff is not relieved of the burden of establishing that he suffered a serious injury within the meaning of Insurance Law § 5102 [d] (*see Zecca v Riccardelli*, 293 AD2d 31 [2d Dept 2002]).

C. The Branch of the Motion as to the MTA

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, the Court is authorized to grant summary judgment on this issue to said non-moving defendant.

“[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]).

The Plaintiff's motion as to the MTA is therefore denied and the MTA is granted summary judgment dismissing the complaint insofar as asserted against it.

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 NYCTA and Rodriguez; and it is further,

ORDERED, that the affirmative defenses of comparative negligence and the emergency doctrine asserted by NYCTA and Rodriguez are dismissed; and it is further,

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

ORDERED, that the MTA is granted summary judgment dismissing the plaintiff's complaint insofar as asserted against it; and it is further,

ORDERED, that the Plaintiff shall serve a copy of this Order with Notice of Entry upon all defendants via NYSCEF by April 18, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
March 18, 2024



MOJGAN C. LANCMAN, J.S.C.

