

McLaurin v Johnson

2025 NY Slip Op 35298(U)

April 30, 2025

Supreme Court, Queens County

Docket Number: Index No. 710266/2020

Judge: Mojgan C. Lancman

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

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ELIZABETH A. MCLAURIN,

Plaintiff,

-against-

ATENOR V. JOHNSON, PEDRO G. MUNOZ, JR., ONEIL
BROWN, METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,
and MTA BUS COMPANY,

Defendants.
-----x

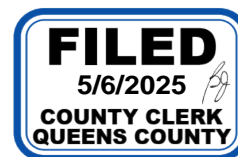
IAS Part 20

Index No.: 710266/2020

Motion Seq. No.: 8

Motion Date: 3.19.2025

Motion Cal. No.: 28



The e-filed documents listed by NYSCEF document numbers 194-216 were read on the motion of defendants Metropolitan Transportation Authority, New York City Transit Authority, and MTA Bus Company (collectively, the “Transit Defendants”) for summary judgment.

The plaintiff, Elizabeth A. McLaurin (the “Plaintiff”), commenced this cause to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the “Accident”). Presently before the Court is the Transit Defendants’ motion for summary judgment. The Transit Defendants also seek summary judgment on behalf of defendant Oneil Brown (“Brown”), who has not joined issue. The Transit Defendants contend that they are entitled to summary judgment because (1) they are not liable for the Accident and (2) the Plaintiff has not satisfied the serious injury threshold established in the Insurance Law. For the following reasons, this unopposed motion is granted to the extent indicated below.

I. Factual Background and Procedural History

The Accident occurred on December 2, 2019, at 21st Street and 37th Avenue in Queens, New York. The Plaintiff was a passenger on the Transit Defendants’ bus, which was traveling on 21st Street. The vehicle owned by defendant Pedro G. Munoz, Jr. (“Munoz”) and operated by defendant Antenor V. Johnson (“Johnson”) (the “Co-Defendants’ Vehicle”) was traveling in the opposite direction on 21st Street.

Brown was the operator of the Transit Defendants’ bus. Brown was served with the Supplemental Summons and Amended Complaint via nail and mail service pursuant to CPLR 308 (4) on June 6 and 8, 2023. The affidavit of service was filed on July 3, 2023 (*see* NYSCEF Doc. No. 126). Although the Transit Defendants move for summary judgment on Brown’s behalf and Brown was deposed on behalf of the Transit Defendants, counsel has not submitted an Answer on his behalf, and Brown has not otherwise joined issue on his own behalf.

Before this motion was filed, this action was settled with and discontinued against Munoz and Johnson (*see* NYSCEF Doc. No. 139). The Transit Defendants' cross-claims against Munoz and Johnson were dismissed pursuant to the Order of this Court dated December 4, 2024 (*see* NYSCEF Doc. No. 192).

In support of this motion, the Transit Defendants submit authenticated video footage taken from the on-board cameras of the subject bus. The video reveals that, immediately prior to the Accident, the bus pulled into the stop on 21st Street at its intersection with 37th Avenue. The bus thereafter pulled out of the bus stop and moved into the intersection. When the bus entered the intersection, the light was green. As the bus entered the intersection, the Co-Defendants' Vehicle was approaching the intersection traveling in the opposition direction on 21st Street. Johnson suddenly starts to make a left turn in front of the bus while the bus was in the middle of the intersection. Before Johnson could complete the turn, the bus struck the Co-Defendants' vehicle. Johnson did not turn into the intersection. Rather, before the intersection, Johnson turned across the double yellow line and attempted to cross in front of the bus through the crosswalk. The Accident occurred within the crosswalk at the subject intersection.

The Plaintiff did not file papers in opposition to this motion.

II. Discussion

A. Summary Judgment in Favor of the Transit Defendants

“A defendant moving for summary judgment arising out of an automobile accident has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the accident, or that the alleged negligence of another person was the sole proximate cause thereof. If the defendant makes a *prima facie* showing of entitlement to judgment as a matter of law, the burden shifts to the plaintiff to raise a triable issue of fact” (*Morante v Blaney*, 234 AD3d 679, 680 [2d Dept 2025]).

Vehicle and Traffic Law § 1141 provides that “[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposition direction which is within the intersection or so close as to constitute an immediate hazard.” Additionally, Vehicle and Traffic Law § 1163 (a) provides that “no person shall turn a vehicle at an intersection ... unless and until such movement can be made with reasonable safety.” Vehicle and Traffic Law § 1163 (a) further provides that “[n]o person shall turn a vehicle at an intersection ... unless and until such movement can be made with reasonable safety.”

“Although a driver with the right-of-way is entitled to anticipate that the other driver will obey the traffic laws requiring him or her to yield, a driver is bound to see what there is to be seen through the proper use of his or sense and is negligent for failure to do so. However, a driver with the right-of-way who only has seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Morante*, 234 AD3d at 680-81).

Here, the properly authenticated bus video, which eliminates all issues of fact (*see Pappas v New York City Tr. Auth.*, 208 AD3d 890 891-92 [2d Dept 2022]), establishes that Johnson was negligent in making a left turn when it was not reasonably safe to do so, directly into the path of the bus. The video further establishes that the Transit Defendants, who had the right of way, only had seconds to react to the accident and therefore were not also negligent. The Transit Defendants have thus established their *prima facie* entitlement to summary judgment (*see Kishun v Roman*, 221 AD3d 795, 796-97 [2d Dept 2023]; *Dominguez v Algeri*, 208 AD3d 753, 755 [2d Dept 2022]; *Yu Mei Liu v Weihong Liu* 163 AD3d 611, 612-13 [2d Dept 2018]).

The Plaintiff, who has not opposed this motion, fails to raise a triable issue of fact. Where a party fails to oppose some or all matters advanced on a motion for summary judgment, the facts as alleged in the movant's papers may be deemed admitted as there is, in effect, a concession that no question of fact exists (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539 [1975]; *Madeline D'Anthony Enter., Inc. v Sokolowsky*, 101 AD3d 606 [1st Dept 2012]; *Argent Mtge. Co., LLC v. Mentosana*, 79 AD3d 1079 [2d Dept 2010]). Further, by failing to oppose the motion, the Plaintiff is also deemed to have acquiesced in the relief sought herein (*see Flake v Van Wagenen*, 54 NY 25 [1873]; *Mixon v TBV, Inc.*, 76 AD3d 144 [2d Dept 2010]).

For the foregoing reasons, the Transit Defendants are granted summary judgment on the issue of liability, and this cause is dismissed against them. In light of this determination, it is unnecessary to consider the Transit Defendants' remaining contentions.

B. Dismissal Against Brown

The Transit Defendants also seek summary judgment in favor of Brown. However, Brown is not entitled to summary judgment as he has not joined issue (*see SHG Resources, LLC v SYTR Real Estate Holdings LLC*, 201 AD3d 610, 611 [1st Dept 2022]). In any event, this cause is dismissed against him on other grounds.

As was noted above, Brown was served via nail and mail service pursuant to CPLR 308 (4), and the affidavit of service was filed on July 3, 2023. Thus, Brown had until August 2, 2023, to file an Answer. However, Brown never filed an Answer, either through the Transit Defendants' counsel or on his own behalf. As the Plaintiff does not oppose this motion, she fails to offer a reasonable excuse for the failure to move for a default judgment. Thus, this cause must be dismissed against Brown pursuant to CPLR 3215 (c) (*see Ocwen Loan Servicing, LLC v Buonauro*, 233 AD3d 972, 974 [2d Dept 2024]).

III. Conclusion

Accordingly, it is hereby:

ORDERED, that the motion is granted; and it is further

ORDERED, that defendants Metropolitan Transportation Authority, New York City Transit Authority, and MTA Bus Company are granted summary judgment; and it is further

ORDERED, that this cause is dismissed against Defendant Oneil Brown as abandoned pursuant to CPLR 3215 (c); and it is further

ORDERED, that the Complaint is dismissed against MTA, NYCTA, MTA Bus, and Brown; and it is further

ORDERED, that the Transit Defendants shall serve a copy of this Order with Notice of Entry on the Plaintiff by June 27, 2025; and it is further

ORDERED, that the Clerk of the Court shall (1) mark his or her records to reflect that this cause is dismissed, (2) close all motions, and (3) close all appearances.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
April 30, 2025



MOJGAN C. LANCMAN, J.S.C.

