

Abdullah v Hall

2025 NY Slip Op 35382(U)

January 10, 2025

Supreme Court, Queens County

Docket Number: Index No. 703154/2022

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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Regina Marie Abdullah,

Index
Number: 703154/22

Plaintiff,

- against -

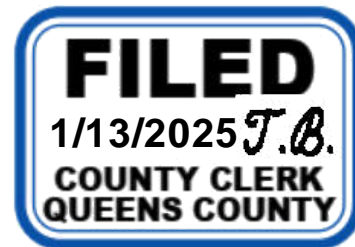
Motion
Date: 12/16/24

Motion Seq. No.: 2

Alex Hall, Metropolitan Transportation
Authority, New York City Transit
Authority, MABSTOA, MTA Bus Company,
City of New York and Edward Holmes,

Defendants.

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The following papers numbered E85-E107 & E111-E118 read on this motion by Plaintiff for summary judgment on the issue of liability as against Defendants, Alex Hall, MTA Bus Company, and Edward Holmes; and cross-motion by Defendants, Metropolitan Transportation Authority, New York City Transit Authority, MABSTOA, MTA Bus Company and Edward Holmes for summary judgment.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E85-101
Notice of Cross-Motion-Affirmation-Exhibits.....	E102-107
Affirmation in Opposition-Exhibits.....	E111-113
Affirmation in Opposition.....	E114-115
Reply.....	E116-118

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Plaintiff for summary judgment on the issue of liability as against Defendant, Alex Hall, is granted. The branch of the motion for summary judgment as against the MTA Bus Company, and Edward Holmes is denied. Cross-motion by Defendants, Metropolitan Transportation Authority ("MTA"), New York City Transit Authority ("NYCTA"), MABSTOA, MTA Bus Company and Edward

Holmes for summary judgment is denied.

Plaintiff allegedly sustained injuries stemming from a motor vehicle accident which occurred on Liberty Avenue at or near its intersection with 104th Street in Queens County on August 23, 2021.

Plaintiff alleges that at the forgoing time and place, an MTA bus bearing the license plate AT9807 and operated by Defendant, Edward Holmes, collided with a 2013 BMW sedan owned and operated by Defendant, Alex Hall. At the time, Plaintiff was a passenger in the MTA bus and said collision caused her to sustain injury.

The certified police report provides that "Driver 1 [Holmes] states he was traveling EB on Liberty Avenue while trying to pass by double parked vehicle, Driver 2 [Hall] backed into his vehicle causing a collision. Driver 2 states while backing up his vehicle he did collide with Driver 1 Vehicle. PD did not witness accident."

Alex Hall testified that he entered a supermarket parking lot to make a three-point turn and intended to pull into a parking space on the opposite side of the roadway thereafter. When he began reversing as a part of the three-point turn, he looked in his rearview mirror and backup camera, admittedly did not look left to right, did not observe the bus, and made contact with it.

Edward Holmes testified that, while operating the subject bus, he intended to go around a double-parked vehicle on the roadway. Prior to crossing over the double yellow line, Holmes brought the bus to a stop and checked for on-coming traffic. There was a supermarket and a parking lot to his left. The bus was stopped when he observed Hall's coming towards him. He moved the bus to go around the double parked car, and in order to do so, crossed over the double yellow line into the opposite lane of traffic. Hall's vehicle continued to traverse towards him. Holmes stopped the bus again. He observed Hall pull into the supermarket and then back up, or engage in a three-point turn, at approximately 10 miles per hour. Holmes honked his horn but Hall's vehicle collided with the bus while the bus was stopped and while Hall was reversing.

In order to obtain summary judgment, movant must make a prima facie showing that it is entitled to said relief, by tendering sufficient proof to eliminate any material issues of fact (see Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851 [1985]; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]).

The branch of the motion for summary judgment as against

Defendant, Alex Hall, is granted. The crux of liability on the part of Hall is determinative of the purported violation of Section 1211(a) of the New York State Vehicle and Traffic Law ("VTL"). In determining liability pursuant to Section 1211(a) of the VTL, the Court must ascertain whether the driver of the vehicle backing up exercised the proper precautions prior to doing so (see Portalatin v. City of New York, 165 A.D.3d 1302 [2d Dept. 2018]; Gil v. Jewish Bd. of Family & Children's Servs., Inc., 183 A.D.3d 468 [1st Dept. 2020]; Ortiz v. Lynch, 105 A.D.3d 584 [1st Dept. 2013]). Counsel for Hall failed to raise a question of fact and merely recites boilerplate and conclusory statements in opposition. There is no evidence on this record that Hall exercised proper precautions prior to reversing his vehicle. Accordingly, Plaintiff has met her prima facie burden with respect to Alex Hall and is entitled to judgment as a matter of law.

The branch of the motion for summary judgment as against MTA Bus Company, and Edward Holmes is denied. The cross-motion by MTA, NYCTA, MABSTOA, MTA Bus Company, and Edward Holmes is denied

Pursuant to the Vehicle and Traffic Law ("VTL") §1128, "whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others constitute herewith shall apply... (a) a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made safely" (see VTL §1128[a]). VTL §1163 provides that all persons turning vehicles at an intersection may not do so unless the movement may be made with reasonable safety (see VTL §1163). Plaintiff also alleges a violation of VTL §1126(a).

Plaintiff avers that Holmes failed to adhere to the forgoing VTL sections by going around a double parked car and intentionally crossing over the double yellow line. Conversely, Cross-movants aver that the collision was solely due to Hall's improper operation of his vehicle.

The Court finds that the conflicting accounts of the manner in which the accident occurred raises a question of fact as to whether Holmes negotiated the lane change without first ascertaining that it could be completed safely, and whether he saw what was to be seen by proper use of his senses, and which precludes a grant of summary judgment (see Ahr v. Karolewski, 48 A.D.3d 719 [2d Dept. 2008]; see also Balanta v. Stanlaine Taxi Corp., 307 AD 2d 1017 [2d Dept 2003]; Carpio v. Leahy Mechanical Corp., 30 AD 3d 554 [2d Dept 2006]; Diasparra v. Smith, 253 AD 2d 840 [2d Dept 1998]).

Accordingly, based on the forgoing and because summary judgment is a drastic remedy (see Rudnitsky v. Robbins, 191 A.D.2d 488 [2d Dept. 1993]), the motion must be denied.

The branch of the motion to dismiss the Defendants' affirmative defenses is granted. The Court acknowledges that as to Plaintiff's conduct, a Plaintiff "is not required to establish his or her freedom from comparative negligence to be entitled summary judgment on the issue of [defendant's] liability" (see Joseph-Felix v. Hersh, 208 A.D.3d 571 [2d Dept. 2022]). However, if the Plaintiff seeks summary judgment, dismissing an affirmative defense, the issue of Plaintiff's comparative negligence may be decided (see id.). Initially, the branch of the motion to strike Alex Hall's first, second, fourth, and seventh affirmative defenses is granted. Plaintiff established that she was free from any comparative fault vis-a-vis submission of her affidavit. Hall failed to properly address dismissal of his affirmative defenses in opposition, and thus, failed to raise an issue of fact.

With respect to the affirmative defenses interposed by MTA, NYCTA, MABSTOA, MTA Bus Company, and Edward Holmes, the forgoing Defendants have withdrawn their first and third affirmative defenses. Plaintiff further seeks to dismiss their fourth, fifth, and fourteenth affirmative defenses. The fourth affirmative defense provides that the accident was spontaneous and unavoidable. The fifth affirmative defense provides that the complaint fails to state a cause of action. The fourteenth affirmative defense provides that the emergency doctrine is applicable. Plaintiff has met her prima facie burden in establishing the inapplicability of the forgoing affirmative defenses. In opposition and support of the cross-motion, the transit Defendants withdrew two affirmative defenses but wholly failed to address the remaining affirmative defenses, thereby abandoning said defenses (see Kuehne & Nagel, Inc. v. Baiden, 36 N.Y.2d 539 [1975]).

Accordingly, the motion by Plaintiff for summary judgment on the issue of liability as against Defendant, Alex Hall, is granted. The branch of the motion to dismiss Alex Hall's first, second, fourth, and seven affirmative defenses is granted. The branch of the motion for summary judgment as against MTA Bus Company, and Edward Holmes is denied. The branch of the motion to dismiss MTA Bus Company and Edward Holmes' fourth, fifth, and fourteenth affirmative defenses is granted. The first and third affirmative defenses interposed by the transit Defendants are voluntarily withdrawn. Cross-motion by Defendants, Metropolitan Transportation

Authority ("MTA"), New York City Transit Authority ("NYCTA"), MABSTOA, MTA Bus Company and Edward Holmes for summary judgment is denied.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: January 10, 2025



KEVIN J. KERRIGAN, J.S.C.

