

<b>Griffin v MTA Bus Co.</b>
2016 NY Slip Op 30056(U)
January 11, 2016
Supreme Court, New York County
Docket Number: 157098/2013
Judge: Michael D. Stallman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 21

-----X  
COREEN GRIFFIN,

Plaintiff,

Index No. 157098/2013

- against -

MTA BUS COMPANY, TROY C. MORGAN,  
NEW YORK CITY TRANSIT AUTHORITY,  
MTA REGIONAL BUS OPERATIONS,  
THE CITY OF NEW YORK,  
VERONICA J. VERA, JOHANN  
CAMPOVERDE, AND GEORGE DILIETO,

**Decision and Order**

Defendants.

-----X

**HON. MICHAEL D. STALLMAN, J.:**

Plaintiff moves, pursuant to CPLR 3212, for summary judgment on liability against defendants. MTA Bus Company (MTA Bus) and Troy C. Morgan (Morgan, together the Bus Defendants) cross-move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint against them. Veronica J. Vera (Vera) and Johann Campoverde (Campoverde) cross-move, pursuant to CPLR 3212, dismissing all claims and cross

claims against them. George Dilieto (Dilieto) moves,<sup>1</sup> pursuant to CPLR 3212, for summary judgment against the Bus Defendants. The motions and cross motions are consolidated for disposition and decided as noted below.

### UNDERLYING ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff alleges that, on December 4, 2012, between 8:30 p.m. and 9:00 p.m., she was a passenger in a bus (the Bus) owned by MTA Bus and driven by Morgan (bill of particulars, items 2, 4; plaintiff 50-H Hearing [the Hearing] at 16). She states that the Bus was driving eastbound on the Long Island Expressway (the LIE) near the Woodhaven Boulevard exit and that she was sitting, reading her Bible, when there was a sudden impact, when the Bus hit the vehicle in front of it (Hearing at 16, 23, 26). She further stated that she did not know how fast the Bus was traveling before the collision and that, since she was sitting reading her Bible, she did not see any vehicle in front of the Bus before the collision (*id.* at 26-27; plaintiff affidavit, ¶¶ 2-3). Plaintiff contends that, due to the accident, she suffered, among other injuries, a left shoulder tear, requiring surgery to repair it (Hearing at 32, 41).

---

<sup>1</sup> Dilieto's motion papers are denominated a cross motion, but they were efiled as a separate motion sequence instead of as a cross motion.

^ This is  
new

Morgan asserts that, on December 4, 2012, at approximately 8:50 p.m., he was driving the Bus eastbound on the LIE on the exit ramp for the Woodhaven Boulevard exit when he was “involved in a multi-vehicle accident” (Morgan affidavit, ¶¶ 3-4). He states that he “was behind the Lexus at a proper and appropriate distance . . . traveling . . . at approximately 20-25 miles per hour” (*id.*, ¶ 11). He contends that there were three other vehicles involved in the accident, an unidentified vehicle that cut off the Mazda, driven by Campoverde, which caused the Lexus, driven by Dilieto, to stop short, and that when Dilieto’s vehicle abruptly stopped, Morgan could not turn into another lane, but had to brake (*id.*, ¶¶ 9, 11-12). He also states that “[a]ll the vehicles were moving prior to these sudden and unexpected short stops” (*id.*, ¶ 10).

Dilieto states that he was driving the middle car, a Lexus, in the multi-vehicle collision, when the Mazda, driven by Campoverde, “was cut off by another vehicle which left the scene . . . [and the Mazda] came to a sudden and complete stop” (Dilieto affidavit, ¶¶ 4, 6-7). He states that he “applied [his] brakes and came to a full stop without contact . . . for maybe two or three seconds when [his car] was slammed in the back by [the Bus] so

hard that it pushed [his] car into the rear of the [Mazda driven] by . . . Campoverde" (*id.*, ¶¶ 8-9).

Campoverde was the driver of the Mazda owned by Vera and he notes that plaintiff's moving papers seeks partial summary judgment on liability only against the Bus Defendants (Andrew Miller affirmation dated December 1, 2014, ¶ 28).

Plaintiff commenced the action on or about August 2, 2013. The action was discontinued against the New York City Transit Authority, MTA Regional Bus Operations and the City of New York by stipulation dated November 20, 2013. Plaintiff testified at the Hearing on October 10, 2013. Each of the respective defendants have an affirmative defense of comparative negligence or culpable conduct in their respective answers. There have been no depositions of any party in the action. In the police report, there is a statement that "Vehicle # 3 [Morgan] states that Vehicle # 1 [Campoverde] stepped hard on his brakes and Vehicle # 2 [Dilieto] stepped hard on his brakes and Vehicle # 3 struck Vehicle # 2 from behind pushing vehicle # 2 into Vehicle # 1." Plaintiff and Dilieto assert that this statement by Morgan establishes liability on his and MTA Bus's part.

### **Summary Judgment Standard**

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant fails to make this showing, the motion must be denied (*id.*). Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]; *Dauman Displays v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990], *lv dismissed* 77 NY2d 939 [1991]). “Where different conclusions can reasonably be drawn from the evidence, the motion should be denied” (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 555 [1992]).

### **Statements in Police Reports**

“[T]he police report of [an] accident [is not admissible where] [t]he officer who prepared the report was not an eyewitness to the accident and

the report contained statements of third parties who were not under any duty to give such statements” (*Conners v Duck’s Cesspool Serv.*, 144 AD2d 329, 329 [2d Dept 1988]). However, when “the statements [in the report] are independently admissible, the police reports containing the statements are admissible” (*Steinhaus v American Home Prods. Corp.*, 18 AD3d 312, 313 [1st Dept 2005]).

### **Rear-End Collision**

“It is well settled that a ‘rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle’” (*Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008] [internal citation omitted]). Also, “[a] rear-end collision with a vehicle that is slowing down establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on him to come forward with an adequate nonnegligent explanation for the accident” (*Dattilo v Best Transp. Inc.*, 79 AD3d 432, 433 [1st Dept 2010]; see also *Avant v Cepin Livery Corp.*, 74 AD3d 533, 534 [1st Dept 2010]). The “duty of explanation on that operator to excuse the collision [has been held to include] a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding, or any other reasonable cause” (*Filippazzo v Santiago*, 277 AD2d

419, 419 [2d Dept 2000]).

The Appellate Division, First Department, has held that “[a] claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence [established by a rear-end collision]” (*Cabrera v Rodriguez*, 72 AD3d 553, 553 [1st Dept 2010]). This is so because it “fails to explain why [the] defendant driver did not maintain a safe distance between herself and the vehicle ahead” (*Soto-Marquin v Mellet*, 63 AD3d 449, 449-450 [1st Dept 2009]; see also *Dicturel v Dukureh*, 71 AD3d 558, 559 [1st Dept 2010]). Also, “[t]he rearmost driver in a chain-reaction collision bears a presumption of responsibility” (*Ferguson v Honda Lease Trust*, 34 AD3d 356, 357 [1st Dept 2006]). However, “[i]n a multi vehicle accident ‘ where . . . there is a question of fact as to the sequence of the collisions [and, consequently, how the accident occurred,] . . . [a] jury question is presented” (*Passos v MTA Bus Co.*, 129 AD3d 481, 482-483 [1st Dept 2015]).

### **Emergency Doctrine**

The emergency doctrine “recognizes 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" (*Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991]; see also *Kong v MTA Bus Co.*, 112 AD3d 581, 582 [2d Dept 2013]; *Tarnavska v Manhattan & Bronx Surface Tr. Operating Auth.*, 106 AD3d 1079, 1079 [2d Dept 2013]).

### DISCUSSION

As noted above, plaintiff, Dilieto and Campoverde contend that Morgan's statement that the Bus struck Dilieto's vehicle from behind establishes liability against the Bus Defendants. Morgan, who was driving the Bus, was "[t]he rearmost driver in a chain-reaction collision [and, therefore,] bears a presumption of responsibility" (*Ferguson*, 34 AD3d at 357). Dilieto contends that as the middle car, which was pushed into Campoverde by the Bus, he is not responsible (see *Tutrani*, 10 NY3d at 908). Similarly, Campoverde asserts that since he was hit from the rear, he and Vera are not responsible.

The presumption "of negligence on the part of the driver of the rear vehicle" establishes a prima facie case of negligence of that driver and, consequently, satisfies plaintiff's, Dilieto's, Campoverde's and Vera's initial

burden on the motion and cross motions for summary judgment (*id.*; *Dattilo*, 79 AD3d at 433). The burden then shifts to the Bus Defendants to proffer “an adequate nonnegligent explanation for the accident” (*Cabrera*, 72 AD3d at 553). Morgan states that an unidentified vehicle cut off the Campoverde vehicle, causing it to stop suddenly and unexpectedly, leading to the Dilieto vehicle to come to an “abrupt stop” (Morgan affidavit, ¶¶ 10-12). He states that the unidentified vehicle left the scene. Dilieto also states that the unidentified vehicle cut in front of Campoverde’s car, causing it to brake sharply (Dilieto affidavit, ¶¶ 4, 6-9). He states that he came to a complete stop for two to three seconds before the Bus struck him in the rear (*id.*, ¶¶ 8-9). Morgan’s statement, which the court must accept as true for the purposes of deciding the motion and cross motions, contradicts Dilieto and asserts that all the vehicles were moving and that therefore Dilieto’s car had not come to a complete stop, that the Bus was traveling at 20-25 miles per hour and that it was “at a proper and appropriate distance” behind Campoverde (Morgan affidavit, ¶¶ 10-11). The necessary implication of Morgan’s statement is that either Campoverde and Dilieto were traveling too fast, that Dilieto was following too closely, or alternatively, that the unidentified vehicle’s actions in cutting

off Campoverde created an emergency (see *Finney*, 127 AD3d at 1134; *Kong*, 112 AD3d at 582).

Significantly, there have not yet been any depositions that could elucidate these factual issues. In sum, Morgan has raised a factual question as to how the accident occurred (*Passos*, 129 AD3d at 482-483).

However, there has been no assertions of any contributory negligence or culpable conduct by the plaintiff. Plaintiff's motion is, therefore, granted to the extent of striking these affirmative defenses and is otherwise denied. Dilieto's motion (denominated as a cross motion) and Campoverde and Vera's cross motion are both denied.

### CONCLUSION

It is, therefore,

ORDERED that the plaintiff's motion for partial summary judgment on the issue of liability (Motion Seq. No. 001) is granted to the extent dismissing the affirmative defenses of comparative negligence and culpable conduct and is otherwise denied; and it is further

ORDERED that the cross motion of MTA Bus Company and Troy C. Morgan for summary judgment (Motion Seq. No. 001) dismissing plaintiff's complaint against them is denied; and it is further

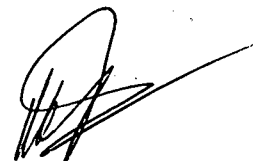
ORDERED that the cross motion of Veronica J. Vera and Johann Campoverde for summary judgment (Motion Seq. No. 001) dismissing all claims against them is denied; and it is further

ORDERED that motion of George Dilieto for summary judgment (denominated as a cross motion) on the issue of liability in favor of Dilieto and against MTA Bus Company and Troy C. Morgan (Motion Seq. No. 002) is denied; and it is further

ORDERED that the remainder of the action shall continue.

**Dated: January // , 2016  
New York, New York**

**ENTER:**



**J.S.C.**

**MICHAEL D. STALLMAN  
J.S.C.**