

**James v New York City Tr. Auth.**

2019 NY Slip Op 33451(U)

November 21, 2019

Supreme Court, New York County

Docket Number: 451894/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

GEORGE JAMES,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, EMPIRE  
PARATRANSIT CORP, JOEL DORLETTE, JUNEL AHMED

Defendant.

-----X

INDEX NO. 451894/2017  
MOTION DATE 07/26/2019  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is ORDERED that defendants Joel Dorlette, Empire Paratransit Corp. and New York City Transit Authority’s (hereinafter “Transit Defendants”) motion for summary judgment, pursuant to CPLR 3212, on the issue of liability in favor of said defendants and as against Co-Defendant Junel Ahmed, and to dismiss plaintiff’s Complaint, as well as any and all cross-claims on the grounds that there are no triable issues of fact with respect to the liability aspect of the action is granted.

The suit at bar stems from a motor vehicle accident which occurred on April 4, 2016, at the intersection of Park Avenue and East 36<sup>th</sup> Street in the County, City, and State of New York, when plaintiff was a passenger in the Transit Defendants’ vehicle when it was rear-ended by a vehicle operated by Co-defendant Ahmed.

“The proponent of a summary judgment motion 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 University Medical Center*, 64

NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Here, the Transit Defendants allege that their vehicle was rear-ended by defendant Ahmed’s vehicle and as such that there is no question of fact regarding the Transit Defendants’ liability in this case. In support of their motion Transit Defendants attach the deposition of plaintiff, the deposition of defendant Joel Dorlette who operated the Transit Defendants’ vehicle, and the deposition of Co-defendant Ahmed (Mot, Exh I, J, K). Plaintiff, defendant Dorlette, and Co-defendant all testified that Co-defendant’s vehicle stuck the Transit Defendants’ vehicle (*id.*). Co-defendant testified that the front right bumper of his vehicle came into contact with the right rear bumper of the Transit Defendants’ vehicle (Mot, Exh K at 11). The Transit Defendants have made a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to defendant Gilbert.

In opposition, plaintiff and Co-defendant fail to raise an issue of fact. Plaintiff and Co-defendant’s opposition hinges on the theory that the Transit Defendants’ vehicle’s brake lights were not working at the time of the incident. However, the Court notes that the law is clear that a claim that the vehicle in front of the rear-ending vehicle did not have functioning brake lights does not adequately rebut the inference of the rear-ending vehicle’s negligence (*Farrington v*

*New York City Tr. Auth*, 333 AD3d 332 [1st Dept 2006] finding that “even if the Transit Authority vehicle’s brake lights were not functioning . . . such failure would not adequately rebut the inference of [defendant’s] negligence” citing *Maccauley v Elrac, Inc.*, 6 AD3d 584 [2d Dept 2004]). Thus, plaintiff and Co-defendant’s argument that an issue of fact exists because of the state of the brake lights at the time of the accident is insufficient to rebut the Transit Defendants’ prima facie showing of Co-defendants negligence for the accident at issue. Transit Defendants’ motion for summary judgment on the issue of liability is granted.

Accordingly, it is

ORDERED that Transit Defendants’ the motion on the issue of liability against Co-defendant Junel Ahmed and for an order that the Transit Defendants bear no liability for the alleged occurrence is granted; and it is further

ORDERED that the complaint is dismissed in its entirety against the Transit Defendants, with costs and disbursement to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendant Junel Ahmed; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption read as follows:

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GEORGE H. JAMES,		
	Plaintiffs,	
-against-		Index No. 156277/2018
JUNEL AHMED,		
	Defendant	
-----X		

and it is further;

ORDERED that within 30 days of entry, counsel for the Transit Defendants serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

11/21/19  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE