SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

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PAULINE COX,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSIT AUTHORITY, MV TRANSPORTATION and ANDRE BROWN,

Defendants.

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Index No.: 451588/2016

Mot. Seq. 2

Decision and Order

The following e-filed documents, listed by NYSCEF document number 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82.

LISA A. SOKOLOFF, J.:

Plaintiff Pauline Cox commenced this personal injury action after sustaining injuries while riding as a passenger in an Access-A-Ride vehicle owned by defendant New York City Transit Authority (NYCTA), and leased to defendant MV Transportation[1] for use in the Paratransit Program. Defendant Andre Brown (Brown), the driver, was employed by MV Transportation. Defendants Metropolitan Transit Authority[2] (MTA), NYCTA, MV Transportation and Brown (collectively, defendants) move, pursuant to CPLR 3212, for an order granting summary judgment dismissing plaintiff's complaint. For the reasons set forth below, defendants' motion is granted with respect to dismissing the complaint as against the MTA and is otherwise denied.

BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff was previously employed as a home health aide. In the afternoon of March 26,

[1] The correct name for this defendant is MV Transportation, Inc.
[2] The correct name for this defendant is Metropolitan Transportation Authority.

2015, plaintiff was accompanying her client home from a medical appointment in an Access-A-Ride vehicle. While Brown was driving the vehicle southbound on Nostrand Avenue in Brooklyn towards Greene Avenue, the right front passenger tire suddenly blew out. Brown swerved and crashed into a parked car, which then hit the parked car in front of it. The police accident report stated, in pertinent part, that, after the right front passenger tire blew out, the driver "lost control of vehicle and rear-ended vehicle #2 who was parked and veh 2 rear ended veh #3 parked also." NYSCEF Doc. 68 at 1.

The relevant testimony surrounding the circumstances of the accident is as follows:

Public Authorities Law Hearing Held June 29, 2015

At the time of the accident, plaintiff was accompanying a wheelchair-bound client home to Brooklyn from a medical appointment in Manhattan. Plaintiff was sitting behind the driver and her client was sitting in the seat behind plaintiff. Plaintiff testified that Nostrand Avenue had two moving lanes of traffic and one parking lane on each side and that it is a one-way street. She did not believe that the driver had been speeding.

Plaintiff testified that Brown was driving in the right lane and that he "rammed up into the parked vehicle" that had been in the parking lane. NYSCEF Doc. No. 67, tr at 42. She did not hear a pop or any unusual noise prior to the crash. "Before the accident, no. The only thing I know is when he ran into the vehicle, that is the only thing that I know, he just, you know, boom, he hit that vehicle and all you hear is the glass popping out." *Id.* at 43. The front of the Access-A-Ride vehicle hit the back of the parked car and that parked car got pushed up into another parked vehicle. She described a hard impact and stated that the accident happened very quickly. She testified that the force of the crash threw her forward so that her right knee hit the pole in the vehicle and her neck and back got thrown back in the seat. Right after the accident occurred,

Brown told plaintiff that his tire popped. She testified that she told him that she was "having pain in my back and my knee and [her client] was having pain." *Id.* at 57. As a result of the accident, among other things, plaintiff testified that she was diagnosed with herniated disks, receiving physical therapy and taking medication for the pain.

Plaintiff's EBT Testimony June 5, 2018

Plaintiff testified that she worked as a home health aide for ten years prior to the accident in March 2015. In April 2016, she started a new job as a traffic agent with NYPD traffic and is still employed there. She testified that the traffic was a "little heavy" on the date of the accident. NYSCEF Doc. No. 70, tr at 39. Brown told plaintiff and the client that he had "worked a double." *Id.* Shortly before the accident, they were traveling in the right lane and Brown went into the left lane to pass a bus and then went back into the right lane. "That's when I noticed him starting like to shift towards the right. Before, I mean it happened so quick he was you know, up on top of the – he ran into the parked vehicle." *Id.* at 44. It was a hard impact. She recalled feeling pain in her back, neck and knee. Plaintiff and the client took an Access-A-Ride to the client's house and called an ambulance from there. Both plaintiff and the client were then evaluated at the emergency room. Plaintiff ultimately had arthroscopic surgery on her right knee.

Brown's Testimony

Brown testified that he was required to take courses, pass a written examination and obtain a commercial driver's license prior to securing a job as a driver for Access-A-Ride. As an Access-A-Ride driver, Brown was responsible for picking up disabled individuals, along with a potential caretaker, and taking them to medical or other types of appointments. Brown was driving a minibus on the date of the accident. He testified that inspectors would inspect the

vehicles prior to going out for the day. Every day prior to taking out the vehicle, Brown would also inspect the vehicle and turn in the inspection report. Among other things, Brown would check to make sure that the brakes and lights were working and that the tires had air pressure.

On the date of the accident, Brown inspected the vehicle and did not find anything wrong with it. Prior to picking up plaintiff, Brown had been driving in Brooklyn and Manhattan and had not experienced any problems with the vehicle. Brown picked up plaintiff and her client from an appointment and was taking them home. Brown testified that he had been driving in the right lane on Nostrand Avenue when the front passenger "tire blew and by the tire blowing the bus swerved. I had to prevent the bus from going into a house, I was preventing that, so when I was preventing it, that's when the bus hit one vehicle and that vehicle hit the next one." NSYCEF Doc. No. 71, Brown tr at 29. He was driving within 20 miles an hour at the moment the tire burst. If the vehicle had continued on its course, "it would have eventually ended up over the sidewalk and into one of those homes." *Id.* at 31. Brown testified that he pressed on the brakes to slow the vehicle down and he attempted to turn the steering wheel to the left to get back in lane. He described the contact with the parked car as "somewhat moderate." *Id.* at 34. There were no parked cars immediately to his right when the bus swerved but there was a sidewalk and then homes beyond the sidewalk.

Brown testified that he had no indication that the tire was going to burst. He stated that construction was being done "at that time. Potholes. So you know, that's – what I believe also could have caused some damage to the tire before it burst." *Id.* at 37. After he hit the parked car, he put his vehicle in park and made sure everyone was alright. He then called his work and the police and assessed the damage.

Instant Action

Plaintiff alleges in the complaint that, "[a]s a result of the negligence and/or recklessness of defendant driver [Brown], for which defendant owners [MTA, NYCTA and MV Transportation], are liable and responsible . . ." plaintiff was injured and suffered damages. NYSCEF Doc. No. 1, Complaint, ¶ 52. She further claims that she has sustained a serious injury and sustained economic loss greater than basic economic loss, as defined in the New York State Insurance Law.

In defendants' answer, in relevant part, the eighth affirmative defense states, "[t]hat the defendant, Andre Brown, was faced with a sudden condition, which he could not have been reasonably anticipated and his response to that condition, which he did not cause or contribute to, was that of a reasonably prudent person." NYSCEF Doc. No. 21, Verified Answer, ¶ 21.

Defendants' Motion

Defendants do not dispute that the NYCTA owned the vehicle and then leased it to MV Transportation, who employed Brown as a driver. They note that the MTA is a "Public Authority/Public Benefit Corporation" and is the "parent authority of its affiliate agency, the [NYCTA]." NYSCEF Doc. No. 61, Shein affirmation in support, ¶ ¶ 20, 21. They also concede that Brown and MV Transportation owed a duty of care to plaintiff while she was a passenger.

However, they argue that Brown was not negligent because he was faced with an emergency situation and in response, acted in a reasonably prudent manner. Defendants summarize how Brown inspected the vehicle prior to the accident and did not notice any defective tires or other conditions. Brown further testified that he was driving at a reasonable speed and he had no reason to anticipate that the tire would blow out. Then, when the tire did unexpectedly blow out, Brown allegedly acted reasonably. He "attempted to steer the vehicle and to apply the brakes to avoid going up on the sidewalk and . . . then struck a parked vehicle

instead." *Id.*, ¶ 71. The accident happened suddenly and Brown "was left with little or no time for thought, deliberation, or consideration." *Id.* As a result, according to defendants, the application of the "Emergency Doctrine" entitles them to dismissal.

Plaintiff's Opposition

Plaintiff argues that the emergency doctrine is not applicable because Brown's negligence contributed to the emergency situation. Plaintiff claims that Brown testified that hazards such as potholes or construction could have caused the tire to blow out. However, Brown "continued to drive at a normal rate of speed and disregards [sic] the potential hazards. Despite the hazards, he continued driving withing '20 miles an hour' regardless of the speed limit on the street and the potholes present." NYSCEF Doc. No. 78, Sasso affirmation in opposition, ¶ 17.

In addition, according to plaintiff, triable questions of fact remain as to whether Brown's actions were reasonable. Brown testified that when the tire burst, he swerved into the right parking lane where there was an open space. He then swerved the vehicle to the left to avoid jumping the curb and hitting the house. In doing so, he hit the parked car. Brown pressed the brakes mildly instead of slamming on them. Brown did not explain why he did not attempt to maneuver the vehicle into the open left travel lane and why he decided to press the brakes mildly, rather than firmly, allowing the vehicle to stop immediately. As a result, Brown allegedly failed to demonstrate the reasonableness of his actions following the tire bursting.

Oral Argument December 5, 2019

During oral argument held on December 5, 2019, counsel for defendants requested relief other than what was in their motion for summary judgment. Counsel explained that the MTA did not own the vehicle, nor did it employ the driver. As a result, counsel argued that the MTA

"should be entitled to summary judgment as having no legal responsibility here." Tr at 3. The court noted that counsel "should have asked for that relief and you should have done that upfront." Tr at 5.

After searching the record, this court granted summary judgment dismissing the complaint as to the MTA. The court noted that the MTA, "which was sued improperly as the Metropolitan Transit Authority, does not have any legal obligation for a vehicle owned by the [NYCTA] or MV Transportation or operated by an employee of MV Transportation." *Id.* at 4. Furthermore, "the case law is very clear in all jurisdictions that the [MTA] is not a proper entity to sue. It's only responsible in very limited areas and this isn't one of them." *Id.* at 6.

The parties then addressed whether Brown acted reasonably when faced with a tire blow out. Plaintiff's counsel argued that Brown could have pulled into the left lane, if it had been in the same direction as the right lane. Defendant's counsel did not have information or confirmation on whether the left lane was open, or whether it was for traffic in the opposite direction.

The court addressed defendants' argument that the driver acted reasonably by hitting a parked car rather than going up on the sidewalk into a house. The court stated that whether or not Brown should have swerved into the lane for oncoming traffic instead of going to the right, would not raise a question of fact. "But if in fact there is a lane to the left that he could have pulled into that was not for opposing traffic, then that might raise a question of fact." *Id.* at 12. The court also voiced concerns over the lack of information regarding the scene of the accident. For example, without photographs or a driver's affidavit, there was no way to tell how wide the street was or how far away the houses were from the curb.

DISCUSSION

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I. Summary Judgment

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 (2013) (internal quotation marks and citation omitted). Upon proffer of evidence establishing a prima facie case by the movant, "the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact." *People v Grasso,* 50 AD3d 535, 545 (1st Dept 2008) (internal quotation marks and citation omitted). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility." *Ruiz v Griffin*, 71 AD3d 1112, 1115 (2d Dept 2010) (internal quotation marks and citation omitted).

II. MTA Not a Proper Party

At the outset, as previously mentioned, during oral argument, this court granted defendants' motion for summary judgment dismissing the complaint as against the MTA. "The MTA is a public benefit corporation . . .. [and] serves as an umbrella organization for eight operating agencies, including the NYCTA . . ." *Matter of New York Pub. Interest Group Straphangers Campaign v Metropolitan Transp. Auth.*, 309 AD2d 127, 134 (1st Dept 2003) (internal citation omitted). It is well settled "that the MTA may not be liable for the torts committed by a subsidiary arising out of the operations of the subsidiary corporation." *Noonan v Long Is. R.R.*, 158 AD2d 392, 393 (1st Dept 1990); *see also* Public Authorities Law 1266 (5)

("Each such subsidiary corporation of the authority shall be subject to suit in accordance with section twelve hundred seventy-six of this title").

Here, it is undisputed that the subject vehicle is owned by the NYCTA and was operated and maintained by MV Transportation and its employee. Therefore, the MTA it is not a proper party, as it had no ownership or control over the vehicle or driver involved and has no tort responsibility for the NYCTA's Access-A-Ride program. Accordingly, the MTA is granted summary judgment dismissing plaintiff's complaint.

III. Emergency Doctrine

The common-law emergency doctrine recognizes the following:

> "[W]hen 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, provided the actor has not created the emergency."

Caristo v Sanzone, 96 NY2d 172, 174 (2001) (internal quotation marks and citation omitted).

In general, both the existence of an emergency and the reasonableness of a driver's reaction are factual questions. However, "[u]nder appropriate circumstances, the existence of an emergency, as well as the reasonableness of the actor's response to it, may be determined as a matter of law." *Wade v Knight Transp., Inc.*, 151 AD3d 1107, 1109-1110 (2d Dept 2017) (internal quotation marks and citations omitted).

Here, defendants have established that Brown was "faced with a sudden and unexpected circumstance" when his tire blew out quickly and without warning. There was no sign of a defective tire upon Brown's earlier inspection and Brown did not get any indication of a problem while he was driving. Courts have similarly found that drivers met their prima face burden to establish that they had been "confronted with an emergency situation when the tire of the vehicle

[they were] driving suddenly blew out . . . ." *Hendrickson v Philbor Motors, Inc.*, 101 AD3d 812, 814 (2d Dept 2012).

Citing Brown's testimony with respect to the existence of potholes on the street, plaintiff argues that Brown contributed to the emergency by driving within 20 miles an hour, despite acknowledging a hazardous situation. However, plaintiff's theory that Brown "helped cause the tire to deflate" by driving at the normal rate of speed, is speculative. *See e.g. Wade v Knight Transp., Inc.*, 151 AD3d at 1110 ("their speculative assertions that Severon may have contributed to the accident or may have been able to avoid it were insufficient to defeat the motions for summary judgment").

Nonetheless, "even where an emergency is found to exist, that does not automatically absolve one from liability; a party may still be found negligent if the acts in response to the emergency are found to be unreasonable." *Maisonet v Roman*, 139 AD3d 121, 124 (1st Dept 2016). Courts have found that, "except in the most egregious circumstances, an evaluation of the reasonableness of a defendant driver's reaction to an emergency is normally left to the trier of fact." *Id.* at 125.

Here, considering the evidence in a light most favorable to plaintiff, plaintiff has raised a triable issue of fact as to whether Brown's actions in response to the emergency were reasonable. Plaintiff testified that Nostrand Avenue was one-way at the site of the accident, with two moving lanes of traffic and a parking lane on each side. As noted during oral argument, there was no definitive answer as to whether the left lane was open for traffic or whether it was going in the opposite direction. Brown did not explain why he did not attempt to drive into the left lane, if it was open when the tire blew out. As a result, questions of fact remain as to whether Brown's actions were reasonable after he was confronted with an emergency. *See e.g. Hendrickson v*

Philbor Motors, Inc., 101 AD3d at 814 (Defendant driver "established that she was confronted with an emergency situation when the tire of the vehicle she was driving suddenly blew out, [but] she failed to meet her prima facie burden of establishing that her subsequent actions were reasonable as a matter of law"); *Compare Santana v Metropolitan Transp. Co.*, 170 AD3d 551, 551-552 (1st Dept 2019) ("no issues of fact exist as to the MTA's negligence given plaintiff's failure in opposition to adduce any evidence tending to show that the nonparty bus driver . . . could have avoided a collision with a vehicle . . . by taking some action other than applying his brakes and turning slightly to the right").

Defendants claim that *Kelly v Rubin* (224 AD2d 262 [1st Dept 1996]), is directly on point to establish that Brown was not negligent as a matter of law. However, defendants' arguments are without merit. Although the driver in *Kelly v Rubin* sustained a sudden tire blowout, the court did not address whether the driver's actions were reasonable after it happened. The court had concluded the driver was not negligent because, among other things, the driver's car never came into contact with plaintiffs' or codefendants' vehicles, plaintiff's theories of negligence were speculative and no evidence was presented that "would warrant the conclusion that [the driver's] blowout played a causal role in [the] collision." *Id.* at 262. Here, on the other hand, under the emergency doctrine, given the issue of whether Brown acted reasonably after the emergency, questions of fact remain as to whether he was negligent.

Brown also testified that there were no cars parked immediately to his right when the bus swerved after the tire blew. However, to prevent the vehicle from going up on the curb and going into someone's house, Brown swerved to the left and then hit a parked car. Nonetheless, defendants did not supply photographs or information about the distance from the curb to the house, leaving no indication as to whether hitting the house was imminent. Accordingly, "[o]n

this record, whether the emergency doctrine precludes liability presents a question of fact and, therefore, summary judgment for defendants . . . [is] inappropriate." *Green v Metropolitan Transp. Auth. Bus Co.*, 26 NY3d 1061, 1062 (2015).

CONCLUSION

Accordingly, it is

ORDERED that the motion for summary judgment brought by defendants New York City Transit Authority, Metropolitan Transportation Authority s/h/a Metropolitan Transit Authority, MV Transportation, Inc. s/h/a MV Transportation and Andre Brown is granted to the extent of dismissing the complaint as against defendant Metropolitan Transportation Authority s/h/a Metropolitan Transit Authority, but is otherwise denied; and it is further

ORDERED that the complaint is hereby severed and dismissed in its entirety as against Metropolitan Transportation Authority s/h/a Metropolitan Transit Authority, without any costs and disbursements to this defendant, and the Clerk is directed to enter judgment accordingly in favor of Metropolitan Transportation Authority s/h/a Metropolitan Transit Authority; and it is further

ORDERED that the MTA shall be removed from the caption of this action, which shall now read:

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PAULINE COX,

Plaintiff,

Index No.: 451588/2016

-against-

NEW YORK CITY TRANSIT AUTHORITY,
MV TRANSPORTATION and ANDRE BROWN,

Defendants.
----------X

And it is further

ORDERED that the movant shall serve of copy of this order with notice of entry upon the Clerk of this Court and the County Clerk.

Dated: October 1, 2020

ENTER:

HON. LISA A. SOKOLOFF, A.J.S.C.