

Brooks v New Dawn Tr. LLC
2020 NY Slip Op 34405(U)
December 10, 2020
Supreme Court, Kings County
Docket Number: 519486/2017
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on 10th the day of December, 2020.

PRESENT:

Hon. Wayne P. Saitta, Justice.

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MATTIE BROOKS,

Plaintiff,

Index No. 519486/2017

-against-

DECISION AND ORDER

NEW DAWN TRANSIT LLC, RAINBOW TRANSIT INC., FEDERAL AUTOMOTIVE SERVICES INCORPORATED, HALMON MILLER, AWA GNING, JEAN MAYO, MV TRANSPORTATION, INC., AUTUMN LEMONS, NEW YORK TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NYC TRANSIT, PARATRANSIT DIVISION, AND ACCESS-A-RIDE,

Defendants.

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The following papers numbered 54-119 read herein:

NYSCEF DOC. NO.

Notice of Motion _____	54 _____
Affirmation in Support _____	55 _____
Memo of Law in Support _____	56 _____
Affirmation in Opposition _____	89 _____
Reply _____	119 _____
Exhibits _____	57-74, 76, 90 _____

This action involves a three-car accident in which Defendant-movant AUTUMN LEMONS was hit in the rear while Plaintiff was a passenger in her vehicle. LEMONS and Co-Defendants MV TRANSPORTATION, INC., AUTUMN LEMONS, NEW YORK TRANSIT AUTHORITY, METROPOLITAN RANSPORTATION AUTHORITY, MTA NYC

TRANSIT, PARATRANSIT DIVISION, and ACCESS-A-RIDE, move for summary judgement on the ground that LEMONS was not negligent when she was hit in the rear by Defendants AWA GNING and HALMON MILLER.

LEMONS was driving an access-a-ride vehicle which Plaintiff claims was owned or operated by the other moving Defendants.

The summary judgment should be granted because even though there are some questions as to the actions of GNING and MILLER, it is uncontested that both struck LEMONS in the rear and LEMONS was not negligent in either causing or failing to avoid the accident.

Defendant-movant LEMONS testified that on the day of the accident she was driving in the service lane of Linden Boulevard when the blue car driven by GNING crossed over the median and struck her vehicle and the school bus driven by MILLER struck her vehicle from behind. LEMONS further testified that the school bus was behind her in the service lane of Linden Boulevard and the blue car was on the main road of Linden Boulevard.

Cross-claimant GNING testified that on the day of the accident, she was in the middle lane of the main road of Linden Boulevard and the school bus was next to her in the right lane. Cross-claimant GNING further testified that the school bus hooked onto her and dragged her over the median into the service lane where she made contact with the rear of the access-a-ride vehicle.

Cross-claimant MILLER testified that he was in the right lane of the main road of Linden Boulevard and the blue car was next to him in the middle lane. Cross-claimant MILLER also testified that the blue car merged into his lane striking him and causing him

to cross over the median into the service lane where he came into contact with the rear of the access-a-ride vehicle.

The co-defendants have not opposed the motion. Plaintiff opposes the motion claiming that LEMONS did not take reasonable action to avoid the accident, specifically that LEMONS did not apply the brakes, did not move the steering wheel, and that she possibly accelerated the motor vehicle before impact. However, LEMONS testified that she did accelerate as it was her only option to avoid being hit from behind because she was in the service lane bounded by a raised median and a parking lane. She stated that had she applied her brakes, the other cars would have hit her. LEMONS testimony in this point was not contradicted by any party.

“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” (*Heaney v. Kahn*, 180 AD3d 1018, 1019 [2d Dept 2020], quoting *Boulos v. Lerner-Harrington*, 124 AD3d 709, 709 [2d Dept 2015]). “A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Jimenez v. Ramirez*, 171 AD3d 902, 903 [2d Dept 2019, quoting *Nsiah-Ababio v. Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle (*Capuozzo v. Miller*, 2020 N.Y. Slip Op. 07026 [2d Dept 2020, quoting *D'Avilar v. Lu*, 184 AD3d 774, 774 [2d Dept 2020]).

Here, Defendant-movants established their prima facie entitlement to judgment as a matter of law on the issue of liability through the deposition testimony of LEMONS, GNING, and MILLER. While the discrepancy of whether the school bus was in the service

road since turning off of Rockaway Avenue onto Linden Boulevard or crossed over the median after colliding with the blue car is relevant to the negligence of the school bus and the blue car, it is not relevant to whether LEMONS was negligent. In either version of the depositions, the access-a-ride vehicle was hit from behind while in the service road which was bounded by a raised median and a parking lane and thus there was nowhere for her to turn to avoid the accident. In either version, since LEMONS was hit from behind, accelerating rather than braking does not constitute negligence.

WHEREFORE, it is ORDERED that Defendants MV TRANSPORTATION, INC., AUTUMN LEMONS, NEW YORK TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NYC TRANSIT, PARATRANSIT DIVISION, AND ACCESS-A-RIDE are granted summary judgment dismissing Plaintiff's complaint as against them; and it is further

ORDERED that Defendants MV TRANSPORTATION, INC., AUTUMN LEMONS, NEW YORK TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NYC TRANSIT, PARATRANSIT DIVISION, AND ACCESS-A-RIDE are granted summary judgment dismissing Cross-Claimants RAINBOW TRANSIT INC.'S, NEW DAWN TRANSIT LLC'S, AWA GNING'S, JEAN MAYO'S, AND HALMON MILLER'S cross-claims as against them.

ENTER,



J.S.C.

