

Pujols v Westchester County Dept. of Pub. Works & Transp.
2021 NY Slip Op 33336(U)
May 27, 2021
Supreme Court, Westchester County
Docket Number: Index No. 70381/2018
Judge: Charles D. Wood
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

-----X
FIRJIA MERCEDES PUJOLS,

Plaintiff,

-against-

**DECISION & ORDER
Index No. 70381/2018
Sequence No. 1**

**WESTCHESTER COUNTY DEPARTMENT OF PUBLIC
WORKS AND TRANSPORTATION, COUNTY OF
WESTCHESTER, WESTCHESTER COUNTY BEELINE
BUS SYSTEM, LIBERTY LINES TRANSIT, INC. and
STEPHEN CARTY,**

Defendants.

-----X
WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Document Numbers 21-36, were read in connection with defendants' summary judgment motion on the issue of liability.

This is an action for personal injuries arising on November 11, 2017, from defendants' bus purportedly sudden and abrupt stopping and swerving. At that time, a Liberty Lines Transit bus operated by Stephen Carty, in which the plaintiff was a passenger, was traveling westbound on Main Street, New Rochelle, proceeding thru the intersection with Kings Highway, when a vehicle suddenly pulled out of Kings Highway directly in front of the Liberty Lines Transit bus, causing the bus driver, Carty to brake and swerve so as to avoid a collision.

Upon the foregoing papers, the motion is decided as follows:

A 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 demonstrate the absence of any material issues of fact” (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakobovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact in admissible form “sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is “required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion” (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]).

Defendant Stephen Carty testified that he is employed by Liberty Lines Transit for which he has been a bus operator for 5 years. Carty states that this incident occurred at the intersection of Main Street and Kings Highway, New Rochelle. Main Street consisted of opposing traffic, with two

lanes of traffic in the direction. Carty was operating the bus on Main Street, and he was driving in the right-hand lane, and the intersection with Kings Highway was controlled by a traffic light, which was green in his favor. Vehicle traffic on Kings Highway was stopped at the traffic light. According to Carty, as he was about half way into the intersection a car suddenly pulled out directly in front of the bus from Kings Highway and turned right onto the lane occupied by the bus. Carty testified that as a result, he immediately applied the brakes and turned to the left to avoid impact, which he accomplished. The unknown vehicle did not stop but drove away. Specifically, Carty testified:

Q. Was the car in the intersection before your bus came into the intersection?

A. No. He suddenly appeared out of nowhere.

Q. When did you first observe this car?

A. When I was in the intersection. (NYSCEF#28).

Defendants offer the surveillance video footage from the bus from the onboard video recording system. Carty testified that he viewed the video and that it accurately and fairly depicted the happening of this incident. The court has reviewed the video footage, which clearly and overwhelmingly demonstrates that the sudden stopping and swerving of the bus resulted from an emergency situation not created or contributed to by defendants, i.e. that of a car suddenly pulling out directly in front of the bus. The video clearly shows that while the bus was driving along Main Street, an unknown car attempting to make a right on red, suddenly pulled out of the intersection with Kings Highway, directly in front of the bus that had the right of way by a controlled traffic device (NYSCEF#30, Video at approx.. 16:59:53).

Pursuant to the emergency doctrine, "those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative courses of conduct, may not be negligent if their actions are reasonable and prudent in the

context of the emergency “Although the existence of an emergency and the reasonableness of a party's response to it will ordinarily present questions of fact, they may in appropriate circumstances be determined as a matter of law” Flores v Metro. Transp. Auth., 122 AD3d 672, 672 (2d Dept 2014) [internal citations omitted].

Accordingly, defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the actions of the bus driver in braking abruptly and swerving to avoid a collision with a car that had suddenly pulled out in front of the bus, were reasonably prudent in an emergency situation not of bus driver's own making. In opposition, plaintiff's failure to adduce any evidence tending to show that the bus driver created the emergency or could have avoided a collision with a vehicle that suddenly moved into the bus's lane of travel by taking some action other than applying his brakes and turning slightly, failed to raise a triable issue of fact.


Therefore, in light of the foregoing, it is hereby

ORDERED, that defendants' motion for summary judgment on the issue of liability is Granted, and the complaint is dismissed.

The Clerk shall mark his records accordingly.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: May 27, 2021
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF