

Bradley v Citywide Tr. Inc.

2022 NY Slip Op 32839(U)

August 17, 2022

Supreme Court, New York County

Docket Number: Index No. 450871/2017

Judge: James G. Clynnes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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CHRISTOPHER BRADLEY,
Plaintiff,

INDEX NO. 450871/2017

MOTION DATE 04/12/2022

MOTION SEQ. NO. 001

- v -

CITYWIDE TRANSIT INC., ADAM DJUKANOVIC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by defendants Defendants Citywide Transit, Inc. (Citywide) and Adem Djukanovic (Djukanovic) for summary judgment in defendants' favor and dismissal of the complaint is decided as follows:

This is a personal injury action. Plaintiff, a police officer, alleges that on March 16, 2011, he was operating a police vehicle and was involved in an emergency situation when, at the intersection of 110th Street and Park Avenue, New York, New York, his vehicle was struck by a school bus operated by Djukanovic and owned by Citywide. Plaintiff alleges that he suffered serious injuries as a result of the collision and commenced this action against defendants, suing them for common law negligence and for violations of sections 1180 (a), 1212, 1144-a and 375 (1) of the Vehicle and Traffic Law (VTL).

Defendants move for dismissal on the ground that they were not negligent as a matter of law and that plaintiff's conduct was the sole proximate cause of the accident. They submit as evidence a copy of the Line of Duty report, a copy of the Accident Report and the deposition testimony of plaintiff and Djukanovic. The Line of Duty and Accident Report conclude that the collision did occur and that the driver of the bus had the right of way prior to the accident. The Accident Report acknowledged that plaintiff was involved in an emergency situation, but that he did not have his siren on at the time. The Accident Report concludes that plaintiff went through a red light and drove into the bus.

Plaintiff's deposition testimony is as follows: plaintiff testified that while driving on Park Avenue, his view of oncoming traffic from 110th Street was obstructed by an elevated Metro North rail line. The front end of his vehicle was in the intersection at the time of the accident. He did not see the bus prior to the collision, and he did not recall seeing the color of the traffic light. Prior to approaching the intersection, plaintiff was coasting at 30 miles per hour. He stated that the bus was in the middle of the intersection at the time of the accident.

Djukanovic's deposition testimony is as follows: Prior to his assigned route, he would inspect his vehicle by checking the lights and brakes. He stated that the bus he drove on the day of

the accident was in proper shape. The day of the accident was rainy, and he had the wipers and defroster on in the bus and had no problems viewing the front window of the bus. He traveled eastbound on 110th Street at the time of the accident. He waited at the red traffic light and heard no siren. After the light turned green, he drove into the intersection. The collision occurred. Djukanovic stated that the first time he saw the police vehicle was when the accident occurred. He was traveling five to ten miles per hour prior to the accident. The front of the police vehicle came into contact with the front right portion of the bus.

In their motion, defendants contend that the Firefighters Rule precludes plaintiff from recovering damages in negligence suits while performing in the line of duty as a police officer. Defendants argue that this doctrine is grounded in public policy against awarding damages to firefighters and police officers for hazards they are specifically trained and compensated to confront. The parties in this action agree that plaintiff was involved in a police-related emergency prior to the accident. According to defendants, plaintiff cannot sue for common law negligence due to the Firefighters Rule.

With respect to the VTL violations, defendants argue that there is no evidence that the bus was in any defective condition, or that Djukanovic was speeding or driving recklessly before the collision. Thus, they assert that there is no proof of any violations. They contend that there is no evidence that they contributed to the accident and that plaintiff is solely liable.

Plaintiff opposes the motion, arguing that issues of fact preclude the granting of summary judgment. Plaintiff submits his affidavit and a copy of page 2 of an accident report. Plaintiff argues that he had his siren on when he was driving, which gave other drivers notice of a police emergency and allowed him to drive through red lights. He slowed down as he approached the intersection, and looked all ways before entering. Plaintiff claims that he saw the bus speeding towards him before the collision. Despite the operation of the siren, plaintiff avers that the bus failed to yield.

Plaintiff contends that he never gave a statement to the police at the time of the accident and that the report was erroneous about the cause of the accident. He submits a page from a report which indicates that his siren was activated prior to the accident.

Plaintiff also argues that in addition to the siren being in operation, defendants were in violation of Section 1144-a of the VTL for failing to exercise reasonable care in driving the bus. Plaintiff insists that Djukanovic was speeding prior to the accident and contributed to the resultant damages. Even if he had the right of way in this situation, plaintiff contends that Djukanovic failed to proceed in a reasonable way and acted negligently.

On procedural grounds, plaintiff argues that defendants failed to annex a copy of the complaint to their papers, in violation of CPLR requirements.

In reply, defendants submit a copy of the complaint. They contend that plaintiff's opposition papers are untimely and should not be considered by the court. Alternatively, defendants affirm their position, arguing that plaintiff is feigning issues of fact in an effort to preclude the granting of summary judgment.

Defendants claim to have sufficient proof that plaintiff failed to operate his siren at the time of the accident, and that the report plaintiff relies on is uncertified and inadmissible. They contend that his assertion that Djukanovic was speeding is rebuffed by Djukanovic's deposition testimony. Moreover, they contend that plaintiff's affidavit contradicts his deposition testimony, where he stated that he did not see the bus until the collision.

Defendants argue that plaintiff did not address their Firefighter Rule arguments in his

papers and therefore, his cause of action in common-law negligence must be dismissed.

“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], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). 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], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[W] here there is any doubt as to the existence of a triable issue of fact,” summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

The court acknowledges the submission of a copy of the complaint by defendants. While defendants contend that plaintiff served an untimely response, the court does not find that defendants would be prejudiced by the untimely response.

Defendants argue that plaintiff did not address the Firefighters Rule concerning tort actions brought by police injured in the line of duty. Defendants are correct in pointing out the public policy considerations when plaintiff seeks damages due to allegations of common-law negligence. At the time of the accident, plaintiff was driving as part of his professional duty and was exposed to the risk of injury appropriate to that scope of performance. However, this rule has been found to be applicable only when police officers sue employers or co-employees (*see Wadler v City of New York*, 14 NY3d 192, 194 [2010]; *see also*, General Obligations Law 11-106[1]). Here, plaintiff is not suing such parties, but a bus driver and his employer. Even if plaintiff failed to address the issue, the Firefighters Rule is not applicable.

Regarding the alleged violation of the VTL, violation of a state statute that imposes a specific duty constitutes negligence per se (*see Elliot v City of New York*, 95 NY2d 730, 732 [2001]). Plaintiff cites four sections, VTL 1180 (a) (speeding); VTL 1212 (reckless driving); VTL 375 (1) (inadequate brakes, steering mechanism, signaling devices); and 1144 (a) (failure to react properly to a parked, stopped or standing vehicle). Plaintiff specifically refers to section 1144 (a), although there was no parked or stopped vehicle in this situation. Nevertheless, plaintiff contends that defendants failed to employ proper care by not yielding to plaintiff when he had his siren on, or by not carefully driving to the intersection. In his deposition, plaintiff testified that he looked left and right as he approached the intersection, despite having his vision blocked by the Metro North rail line. He stated that he also slowed down considerably while his siren was on. Djukanovic testified that he slowed down as he approached the intersection, stopped for a red traffic light and moved after the light turned green. Neither party stated that he saw the other vehicle until the collision, which would have made any attempt to stop or slow down beforehand impossible. Djukanovic clearly testified that he did not hear a siren before the accident and did not yield.

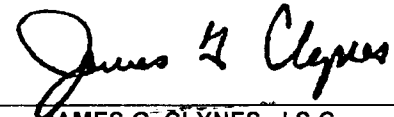
Both plaintiff and Djukanovic testified that neither made a statement to officers who finally wrote the Accident Report. A copy of the Report indicates statements made by plaintiff and Djukanovic, though their names are not mentioned. The statement of the operator of dept. vehicle: “While I was responding to a radio run at 125/Lex, I was involved in a motor vehicle accident at 110/Park ..” The statement of civilian operator: “I was traveling east bound on 110 Street, I had a green light, as I proceeded thru Park Ave., I was struck by a police car.” The Accident Report also states that the plaintiff’s siren had not been operating. The report that plaintiff contends contradicts the Accident Report is uncertified and unclear.

The credibility of plaintiff and Djukanovic is at issue. This goes to the whether plaintiff operated his siren at the time of the accident or whether Djukanovic exercised reasonable care. Issues of credibility are not appropriately resolved on a motion for summary judgment (*see Santos v Temco Serv. Indus.*, 295 AD2d 218 [1st Dept 2002]).

Accordingly, it is

ORDERED that defendants Citywide Transit, Inc. and Adem Djukanovic's motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.



JAMES G. CLYNES, J.S.C.

8/17/2022

DATE

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