

Baker v New York City Hous. Auth.

2023 NY Slip Op 31760(U)

May 24, 2023

Supreme Court, New York County

Docket Number: Index No. 157296/2019

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 22M

Justice

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NICHELLE N. BAKER,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, KHANIQUE K. WELLINGTON

Defendant.

-----X

INDEX NO. 157296/2019

MOTION DATE 04/06/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and following oral argument, the motion by Plaintiff for an order pursuant to CPLR 3212 granting summary judgment on liability in favor of Plaintiff and against Defendants to dismiss Defendants' First Affirmative Defense alleging culpable conduct of the plaintiff or third parties; Second Affirmative Defense alleging assumption of risk; Third Affirmative Defense alleging failure to utilize seat-belts; Seventh Affirmative Defense alleging comparative negligence; and Ninth Affirmative Defense alleging intervening force is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of an October 22, 2018 motor vehicle accident between Plaintiff's vehicle and a vehicle owned by Defendant New York City Housing Authority (NYCHA) and operated by Defendant Khanique K Wellington (Wellington).

In support of her motion, Plaintiff relies on the examination before trial (EBT) testimony of Plaintiff and Defendant Driver Wellington. In her EBT, Plaintiff testified that she lives in a cul-de-sac/ "horseshoe" street, she only has a learner's permit, not a license, that she went to move her car for alternate side parking, she got into her car, put on her seatbelt, checked her mirrors, saw a parking spot on the other side of the street, she moved her car around the top of the horseshoe, and came to a stop about one car length behind the NYCHA vehicle with the car in drive and her foot

on the brake, the NYCHA vehicle was already stopped at the stop sign, she pulled up behind it with the intention of parking in the available parking spot next to the NYCHA vehicle, she waited a few seconds, her vehicle was behind the NYCHA vehicle but towards the left driver's side, she attempted to look past the NYCHA vehicle on the driver's side to see why they were stopped for so long or if there was traffic ahead of it, and the NYCHA vehicle then reversed and struck the front middle portion of her vehicle with one hard impact and she immediately pressed on the vehicle's horn to alert the NYCHA vehicle driver. Plaintiff further testified that from the time she got into her vehicle until the time the accident occurred, she was not using her cell phone at any time, did not have the radio on, and that at the time of the impact, she was looking to the left and forward, and that she did not see the NYCHA vehicle reversing.

Defendant Wellington testified that she drove the NYCHA pickup truck, and on the date of the accident, she followed her route to refuel light towers with co-worker Lee Vaughn Hunter, she parked in a two way street adjacent to the garbage compactors, to the right of the truck was the light tower that they were tasked with refueling, to the right of that light tower was the curb of the sidewalk, she stopped her vehicle a little too far away from the tower, as they would not be able to reach the tower with the refueling hose, so that she had to move back a little bit. Defendant Wellington also testified that the entire vehicle was situated completely in the right lane, she took the NYCHA vehicle out of drive and changed it to reverse, the vehicle stayed still for approximately two minutes, during which time she informed her co-worker that they were too far from the lamp post, she checked her side view and rearview mirrors, and seeing no vehicle in any of the mirrors and while continuously looking in her mirrors before and while she applied a little pressure on the gas pedal to move in reverse, that she was made aware of the accident by hearing the impact and feeling it "a little," and that after the impact, the driver of the rear vehicle honked her horn. Defendant Wellington also testified that she did not observe the other vehicle at any point before the crash, the NYCHA vehicle is high off the ground with the diesel tank mounted in the bed of the pickup truck that blocked her view, so that Wellington was not able to see the smaller vehicle behind their vehicle, as there was an apparent height discrepancy. Defendant Wellington did not dispute that Plaintiff's vehicle was stopped.

Based on the testimony of both parties, Plaintiff has established a prima facie showing of negligence by Defendants (*Salodkaya v City of NY*, 193 AD3d 604 [1st Dept 2021] [A defendant was negligent as a matter of law for backing up a truck into a stopped vehicle within which the

plaintiff was sitting]; *Guzman v Schiavone Constr. Co.*, 4 AD3d 150 [1st Dept 2004] [A collision with a stationary vehicle amounted to prima facie evidence of negligence on the part of the operator of the moving vehicle]). Plaintiff has also established entitlement to the dismissal of the Third Affirmative Defense alleging failure to utilize seat-belts through her EBT testimony in which she testified that she put on her seatbelt. The burden therefore shifts to Defendants to raise an issue of fact.

Defendants' opposition does not raise an issue of fact sufficient to preclude summary judgment on liability in favor of Plaintiff and against Defendants. Defendants rely on the EBT testimony of both parties as well as Plaintiff's 50-H hearing testimony, in which she testified that she did not have a driver's license on the date of the accident and that she was operating the vehicle without a licensed driver in the car, consistent with her EBT testimony.

Operating a motor vehicle without a license is not negligence per se (*Dance v Southampton*, 95 AD2d 442 [2d Dept 1983]). The absence or possession of a driver's license relates only to the authority for operating the vehicle and not to the manner thereof (*Firmes v Chase Manhattan Auto. Fin. Corp.*, 50 AD3d 18 [2d Dept 2008]; *Almonte v Marsha Operating Corp.*, 265 AD2d 357 [2d Dept 1999] [the fact that [defendant] was unlicensed failed to demonstrate that he was negligent, as the absence or possession of a driver's license relates only to the authority for operating a vehicle, and not to its manner of operation]).

Defendants contend that summary judgment should be denied because issues of fact remain as to whether Defendant Wellington did everything she could do to determine whether it was safe to back up when she did. Defendant Wellington testified that she was aware of the blind spot behind her vehicle that is created by the diesel tank, and that she never saw Plaintiff's car, which was behind her.

That portion of Plaintiff's motion seeking dismissal of Defendants' First Affirmative Defense alleging culpable conduct of Plaintiff or third parties; Second Affirmative Defense alleging assumption of risk; Seventh Affirmative Defense alleging comparative negligence; and Ninth Affirmative Defense alleging intervening force is denied. Although Plaintiff does not have to show an absence of comparative fault, Defendant Wellington's negligence may or may not have been the sole proximate cause of the accident (*Carlos Rodriguez, Appellant, v City of NY, Respondent.*, 31 NY3d 312 [2018]).

There remain issues of fact as to whether Plaintiff was comparatively negligent by looking straight ahead but not seeing Defendants' vehicle reversing. Accordingly, it is

ORDERED that the branch of Plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that the branch of Plaintiff's motion to strike Defendants' Third Affirmative Defense alleging failure to utilize seat-belts is granted; and it is further

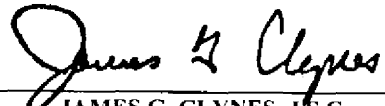
ORDERED that the branch of Plaintiff's motion to strike Defendants' First Affirmative Defense alleging culpable conduct of the plaintiff or third parties; Second Affirmative Defense alleging assumption of risk; Seventh Affirmative Defense alleging comparative negligence; and Ninth Affirmative Defense alleging intervening force is denied; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendants with Notice of Entry.

This constitutes the Decision and Order of the Court.

5/24/2023
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	