Tejada v Manhattan & Bronx Surface Tr. Operating Auth. (MABSTOA)
2023 NY Slip Op 33097(U)
August 30, 2023
Supreme Court, New York County
Docket Number: Index No. 152128/2020
Judge: Denise M. Dominguez
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DENISE M DOMINGUEZ** **PART** **21**

Justice

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EDUARDO TEJADA,

Plaintiff,

- v -

MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY (MABSTOA), NEW YORK CITY TRANSIT AUTHORITY (NYCTA), MTA BUS COMPANY (MBC), METROPOLITAN TRANSPORTATION AUTHORITY (MTA), SHARIFFE SAMUELS, CENTURY WASTE SERVICES LLC, CHARLES KING

Defendants.

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INDEX NO. 152128/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for JUDGMENT - SUMMARY.

For the reasons that follow, the Plaintiff's motion for summary judgment pursuant to CPLR §3212 against all of the Defendants is denied.

This personal injury matter arises out of an August 30, 2019 3:40 a.m. three-vehicle motor vehicle collision on Broadway near West 92nd Street in Manhattan involving a bus, owned by Defendants MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, MTA BUS COMPANY, METROPOLITAN TRANSPORTATION AUTHORITY and operated by Defendant SHARIFFE SAMUELS ("TRANSIT"), a garbage truck owned by Defendant CENTURY WASTE SERVICES LLC and operated by Defendant CHARLES KING ("CENTURY") and a vehicle operated by the Plaintiff, EDUARDO TEJADA. (NYSCEF Doc. 29). The Plaintiff alleges TRANSIT and CENTURY were the sole cause of the accident.

The Plaintiff now moves pre note of issue for summary judgment alleging that TRANSIT was negligent *per se* because the bus was double parked for 30 minutes and that CENTURY was negligent *per se* because it made a sharp right turn into the Plaintiff's lane of traffic causing the Plaintiff to swerve and come into contact with the bus. The Defendants oppose alleging that the

Plaintiff's reckless driving in attempting to drive between the garbage truck while it was in the process of a necessary wide turn and the double-parked bus which was running replacement shuttle service for the 1 subway line.

CPLR §3212 provides any party in any action, including in a negligence action, to move for summary judgment. (CPLR §3212 [a], *Andre* v. *Pomeroy,* 35 N.Y.2d 361, 320 N.E.2d 853 [1974]). The party seeking summary judgment, even if unopposed, has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form (*see* CPLR §3212 [b], *Voss v Netherlands Ins. Co.,* 22 N.Y.3d 728, 734, 8 N.E.3d 823 [2014], *Giuffrida* v *Citibank Corp.,* 100 N.Y.2d 72, 81, 790 N.E.2d 772 [2003], *Alvarez v Prospect Hosp.,* 68 N.Y.2d 320, 324–25, 501 N.E.2d 572, 574 [1986], *see also Zuckerman* v *City of New York,* 49 NY2d 557 [1980]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action". (*Alvarez v Prospect Hosp.,* 68 N.Y.2d 320, 324, 501 N.E.2d 572, 574 [1986]).

Upon review, the Plaintiff has not established his right to judgment as a matter of law as there remain triable issues of fact concerning how this accident occurred, the Defendants' respective negligence, as well as the Plaintiff's comparative negligence, which precludes judgment as a matter of law.

Issues of fact exist as to how the collision happened as the Plaintiff and Defendants' version of the accident is disputed. The Plaintiff claims that the garbage truck "cut off" the Plaintiff's vehicle. However, CENTURY maintains that the garbage truck began its necessary wide turn well in advance of the intersection by utilizing its right turning signal and did not "cut off" the Plaintiff. Rather, CENTURY asserts that KING checked to make sure there was clearance to safely make the turn before beginning its turn, but the Plaintiff drove recklessly and attempted to squeeze between the garbage truck and the stopped bus (NYSCEF Doc. 33, 47). A review of the bus' surveillance video (NYSCEF Doc. 48, 49, 50), as well as the photos marked at Defendant KING's deposition (NYSCEF Doc. 46) raise a material question of fact as to how this accident occurred and what the proximate cause of the accident may have been. It has long been held that "… issues of proximate cause are fact questions to be decided by a jury. While it is appropriate to decide the question of legal cause as a matter of law 'where only one conclusion may be drawn from the established facts', where there is any doubt, confusion, or difficulty in deciding whether the issue

ought to be decided as a matter of law, the better course is to leave the point for the jury to decide." (*White v. Diaz*, 49 A.D.3d 134, 139, 854 N.Y.S.2d 106 [1st Dept 2008] *quoting Derdiarian v. Felix Contracting Corp.*, 51 N.Y.2d 308, 315, 414 N.E.2d 666 [1980]).

Moreover, the Plaintiff's argument that TRANSIT is negligent *per se* due to the fact that the bus was stopped/double parked in a moving lane is not availing. "The fact that a vehicle is double parked 'does not automatically establish that such double parking was the proximate cause of the accident'." (*Cervera v. Moran*, 122 A.D.3d 482, 483, 997 N.Y.S.2d 39, 39 [1st Dept 2014] *quoting DeAngelis v. Kirschner,* 171 A.D.2d 593, 595, 567 N.Y.S.2d 457 [1st Dept. 1991]). Thus, the position of the bus parked/stopped on its own does not establish negligence *per se* as Courts have routinely found that where vehicle's double-parked position may simply furnish "... the condition or occasion for the occurrence of the event" without being the proximate cause of the event. (*Cervera* 122 A.D.3d at 483, *supra*; *see DeAngelis* 171 A.D.2d at 595). The evaluation of the role a double-parked vehicle may have in contributing to an accident is a case/factually specific analysis. (*see Barry v. Pepsi-Cola Bottling Co. of New York*, 130 A.D.3d 500, 11 N.Y.S.3d 857, [1st Dept 2015]). Here, the bus was stopped for several minutes prior to the accident with its caution lights engaged (seen on the video) and there were two moving lanes of traffic to the left of the bus that were unobstructed permitting the minimal traffic at that time of the day to easily pass (also seen on the video). Thus, it cannot be said as a matter of law that the double-parked bus was a proximate cause of the subject accident.

Accordingly, it is hereby

ORDERED that the Plaintiff's motion for summary judgment against the Defendants is denied; and it is further

ORDERED that the Plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on*

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby expressly denied.

8/30/2023

DATE

HON. DENISE M. DOMINGUEZ
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

152128/2020 TEJADA, EDUARDO vs. MANHATTAN AND BRONX SURFACE
Motion No. 001