

Arieta v MTA Bus Co.
2011 NY Slip Op 30168(U)
January 11, 2011
Supreme Court, Nassau County
Docket Number: 5554/09
Judge: Karen V. Murphy
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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 15 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

_____ x

CARLOS ARIETA,

Plaintiff(s),

-against-

**MTA BUS COMPANY, MTA LONG ISLAND BUS,
METROPOLITAN SUBURBAN BUS AUTHORITY,
JAMES BERNARD, METROPOLITAN TRANSIT
AUTHORITY, COUNTY OF NASSAU and
GERARD H. SHARPE,**

Defendant(s).

_____ x

GERALD H. SHARPE,

Plaintiff(s),

-against-

**METROPOLITAN SUBURBAN BUS AUTHORITY,
LONG ISLAND BUS CO. and JAMES BERNARD,**

Defendant(s).

_____ x

RAYMONDE KERNIZAN,

Plaintiff(s),

-against-

**METROPOLITAN TRANSPORTATION
AUTHORITY, LONG ISLAND BUS CO. f/k/a
METROPOLITAN SUBURBAN BUS AUTHORITY
AND BERNARD JAMES,**

_____ x

Action No. 1

Index No. 5554/09

**Motion Submitted: 11/30/10
Motion Sequence: 004, 006, 007**

Action No. 2

Index No. 6782/09

Action No. 3

Index No. 7754/09

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....XXX
- Answering Papers.....XX
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Defendant Gerald H. Sharpe moves this Court pursuant to CPLR §3212 , in Action No. 1, for summary judgment dismissing the complaint insofar as interposed against him.

Plaintiff Gerard Sharpe in Action No. 2 moves this Court pursuant to CPLR §3212 for summary on the issue of liability.

Plaintiff Carlos Arieta in Action No. 1 moves this Court pursuant to CPLR §3212 for summary on the issue of liability.

On April 24, 2008, at approximately 5:30 p.m., a bus owned by MTA/Transit Authority defendants and operated by Bernard James, collided into a then stationary vehicle operated by the plaintiff in Action No. 1, Carlos Arieta.

At the time, Arieta's north-bound facing vehicle was stopped at a red light on Greenwich Street, at the intersection of Jerusalem Avenue and Greenwich in the Village of Hempstead. According to Arieta, who was first in line at the light, the weather at the time was clear and sunny and he experienced no difficulty with sun glare.

The force of the rear-end impact from the bus thrust Arieta's vehicle some two car lengths into the intersection, where it then came into contact with another vehicle operated by Gerard H. Sharpe. Sharpe was then proceeding in a mini-van through the intersection in an easterly direction on Jerusalem with a prevailing green light.

Prior to the impact, Sharpe was stopped at a red light on Jerusalem Avenue and began to proceed toward the intersection when the light turned green for him. Sharpe could not estimate how far from the intersection he was when the light phase changed to green.

As he approached the intersection, he was focusing on the road straight ahead of him, although out of the "corner of his eye," he noticed Arieta's vehicle stopped at the red light on Greenwich. According to Sharpe, he also observed the bus approaching Arieta's car. From Sharpe's vantage point, it did not appear as though the bus was going to stop behind Arieta's then, stationary car.

Sharpe stated, however, that he did not actually observe the bus hit Arieta's car. Nor did he thereafter observe Arieta's car before it struck his own vehicle. Specifically, and prior to the Arieta car's impact with his car, Sharpe paid "no attention" to Arieta because the vehicles on Greenwich were then stopped at the red light as he proceeded toward the intersection.

The ensuing impact to Sharpe's car resulting from its contact with Arieta's vehicle was "heavy" and occurred in the middle of the intersection. The point of impact took place on the passenger side, front fender of Sharpe's mini-van.

According to the MTA bus driver, Bernard James, as he first approached the intersection in his bus, the light on Greenwich was green in his favor, although second some 20-30 seconds before the accident occurred, he allegedly experienced sun glare which "kind of blinded * * [him] for a second." At the point when he allegedly experienced the sun glare, he did nothing in particular with respect to the operation of the bus, but instead, continued to proceed as he had been towards the intersection, where the accident then took place.

Thereafter, the plaintiff Carlos Arieta commenced the within action (Action No. 1). Related actions were thereafter commenced by, *inter alia*, Gerard Sharpe, and Oscar Arieta, Carlos' brother and the owner of the vehicle Carlos was operating at the time of the accident.

Issue has been joined and depositions have been conducted. The various related actions have been consolidated for joint trial pursuant to CPLR §602 (*see*, Orders of Murphy, J., dated November 17, 2010 and April 7, 2010).

Upon the instant notices, the plaintiffs in Actions No. 1 (Carlos Arieta; Motion sequence "7") and Action No. 2 (Gerard Sharpe, Motion sequence "4"), now move for partial summary judgment on the issue of liability as against the MTA codefendants and Bernard James, while Sharpe also moves by separate notice of motion in Action No. 1 (where he is a named defendant), for dismissal of the complaint and all cross claims insofar as interposed against him therein (Motion sequence "6").

The Court notes that in connection with his motion in Action No. 1, Carlos Arieta has made no claims with respect to Sharpe's alleged liability in the accident transaction. The motion by Carlos Arieta is granted. The motions by Gerard Sharpe are denied.

It is settled that "[a] rear-end collision with a stopped vehicle establishes a prima facie case of negligence against the operator of the moving vehicle, and imposes a duty on that operator to provide a non-negligent explanation for the collision (*Blasso v. Parente*,

___ N.Y.S.2d ___, 2010 WL 5141882 (2d Dept., 2010); *Bernier v. Torres*, ___ N.Y.S.2d ___, 2010 WL 5095554 (2d Dept., 2010); *Savarese v. Cerrachio*, ___ A.D.3d ___, 911 N.Y.S.2d 921 [2d Dept., 2010]).

Further, “[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” (*Nsiah-Ababio v. Hunter*, ___ N.Y.S.2d ___, 2010 WL 4366872 (2d Dept., 2010); *Barberena v. Budd Enterprises, Ltd.*, 299 A.D.2d 305, 749 N.Y.S.2d 147 (2d Dept., 2002); *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 (1st Dept., 1999) *see also*, *Robert Blasso, v. Parente, supra*; *Vehicle and Traffic Law § 1129(a)*).

Here, the plaintiff Carlos Arieta has established his *prima facie* entitlement to judgment as a matter of law by submitting proof that the MTA bus operated by Bernard James struck the rear of his vehicle after it had come to a lawful stop at a red light (*see, Savarese v. Cerrachio, supra*; *Nsiah-Ababio v. Hunter, supra*).

In opposition to the motion, the MTA/Transit Authority has failed to raise a triable issue of fact. The relevant testimony establishes that James was approaching an intersection at approximately 20 or 25 miles per hour notwithstanding that he was allegedly blinded by the sun for a “second” some twenty or thirty seconds before the impact occurred (*see generally, Agramonte v. City of New York*, 288 A.D.2d 75, 76, 732 N.Y.S.2d 414 [1st Dept., 2001]).

Moreover, James’ testimony was that despite the obstructed nature of his vision during the 20-30 seconds that elapsed between and the accident and the sun glare’s occurrence, he did not brake or do anything to moderate or adjust the manner in which he was operating his vehicle (*Agramonte v. City of New York, supra*; *Johnson v. Phillips, supra*; *Birbal v. Elysee*, ___ Misc.3d ___, 2007 WL 5840672 (Supreme Court, Queens County 2007) *cf.*, *Lifson v. City of Syracuse*, 72 A.D.3d 1523, 898 N.Y.S.2d 925 [4th Dept., 2010]).

Upon these facts, the proximate cause of the impact with Arieta’s vehicle was the James’ negligent failure to see what there was to be seen, to drive at a safe speed, and to maintain a safe distance behind the Arieta vehicle (*cf.*, *Blasso v. Parente, supra*; *Agramonte v. City of New York, supra*; *Johnson v. Phillips, supra*).

However, and with respect to the motions by Gerard Sharpe in Actions 1 and 2, the evidence has generated issues of fact with respect to the manner in which the impact between the Sharpe and Arieta vehicles occurred.

Specifically, Sharpe testified that he never observed the Arieta vehicle prior to its impact with his car, but rather, paid “no attention” to it as he proceeded into the intersection. The record does not otherwise reveal precisely where Sharpe’s car was at the point when the bus struck Arieta’s car. Based on this testimony, it is unclear whether Sharpe’s failure to observe Arieta’s vehicle prior to the impact prevented him from taking actions that might have prevented the collision from occurring (*Kim v. Acosta*, 72 A.D.3d 648, 897 N.Y.S.2d 721 (2d Dept., 2010); *Todd v. Godek*, *supra*, 71 A.D.3d 872, 895 N.Y.S.2d 861 (2d Dept., 2010) (see also, *Goldenberg v. Palewicz*, 65 A.D.3d 518, 882 N.Y.S.2d 916 (2d Dept., 2009); *Miano v. 1-9 Seafood Plaza, Inc.*, 57 A.D.3d 488, 867 N.Y.S.2d 706 (2d Dept., 2008) cf., *Katz v. Masada II Car & Limo Service, Inc.*, 43 A.D.3d 876, 877, 841 N.Y.S.2d 370 [2d Dept., 2007]).

It is settled that “[a] driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection” (*Todd v. Godek*, *supra*; *Tapia v. Royal Tours Service, Inc.*, 67 A.D.3d 894, 895, 889 N.Y.S.2d 225 (2d Dept., 2009); *Gorham v. Methun*, 57 A.D.3d 480, 481, 869 N.Y.S.2d 182 (2d Dept., 2008); *Demant v. Rochevet*, 43 A.D.3d 981, 842 N.Y.S.2d 74 (2d Dept., 2007) see generally, *Siegel v. Sweeney*, 266 A.D.2d 200, 697 N.Y.S.2d 317 [2d Dept., 1999]). Notably, “[t]here can be more than one proximate cause of an accident” and “the issue of comparative negligence is generally a question for the jury to decide” (*Todd v. Godek*, *supra*; *Cox v. Nunez*, 23 A.D.3d 427, 805 N.Y.S.2d 604 (2d Dept., 2005); see also, *Topalis v. Zwolski*, 76 A.D.3d 524, 525, 906 N.Y.S.2d 317 [2d Dept., 2010]; *Kim v. Acosta*, *supra*).

Summary judgment is a drastic remedy (see, *Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 (1974); *Mosheyev v. Pilevsky*, 283 A.D.2d 469, 725 N.Y.S.2d 206 (2d Dept., 2001), and “[e]ven the color of a triable issue forecloses the remedy” (*In re Cuttitto Family Trust*, 10 A.D.3d 656, 781 N.Y.S.2d 696 (2d Dept., 2004); *Rudnitsky v. Robbins*, 191 A.D.2d 488, 489, 594 N.Y.S.2d 354 [2d Dept., 1993]).

The Court has considered the parties’ remaining contentions and concludes that none warrants the awarding of relief in excess of that granted above.

Accordingly, it is,

ORDERED that the motion pursuant to CPLR §3212 by the plaintiff Carlos Arieta in Action No. 1 for summary on the issue of liability as against the MTA/ Transit Authority defendants and Bernard James, is granted, and it is further,

ORDERED that the motions for summary judgment pursuant to CPLR §3212 by the movant Gerard H. Sharpe, in Action Nos. 1 and 2, are denied.

The foregoing constitutes the decision and order of the Court.

Dated: January 11, 2011
Mineola, N.Y.


J. S. C.

ENTERED

JAN 18 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE