

Han v Atiq

2010 NY Slip Op 31379(U)

April 14, 2010

Supreme Court, Suffolk County

Docket Number: 08-22355

Judge: Peter Fox Cohalan

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 24 - SUFFOLK COUNTY

PRESENT:

Hon. PETER FOX COHALAN
Justice of the Supreme Court

MOTION DATE 10-15-09
ADJ. DATE 2-17-10
MNEMONIC: # 001 - MotD

COPY

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MAGGIE HAN, an infant by her Father and :
Natural Guardian JIE HAN and JIE HAN, :
individually, :
: Plaintiff, :
- against - :
: AMNA ATIQ, ROHMEN ATIQ, BOARD OF :
EDUCATION OF HALF HOLLOW HILLS :
CENTRAL SCHOOL DISTRICT, HALF :
HOLLOW HILLS CENTRAL SCHOOL :
DISTRICT, PITERS CALIXTE, EDUCATIONAL :
BUS TRANSPORTATION, INC., :
EDUCATIONAL BUS, INC., JOHN DOE, that :
name being fictitious, the true name of the :
defendant being unknown to the plaintiffs, :
DOE CORP. # 1 and DOE CORP. # 2, the :
true names of defendants being unknown to :
the plaintiffs. :
: Defendants. :
-----X

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Upon the following papers numbered 1 to 31 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers (001) 1 - 14; Notice of Cross Motion and supporting papers; Answering Affidavits and supporting papers 15-23; 24-26; Replying Affidavits and supporting papers 27-29; Other 30-31; and after hearing counsel in support and opposed to the motion it is,

ORDERED that this motion (001) by the defendants, Half Hollow Hills Central School District, Piters Calixte, Educational Bus Inc. and Educational Bus Transportation, Inc., for an order pursuant to CPLR §3212 granting summary judgment dismissing the complaint as asserted against them is granted to the extent that summary judgment dismissing the complaint is granted to Half Hollow Hills Central School District and the Board of Education of Half Hollow Hills Central School District, and is denied as to Piters Calixte and Educational Bus, Inc. and Educational Bus Transportation, Inc.

This is an action to recover damages for injuries sustained by Maggie Han (hereinafter plaintiff) on October 31, 2007 at approximately 6:30 a.m., when, as a tenth grade student at the East High School which is part of the Half Hollow Hills Central School District (hereinafter School District), she was about to board her school bus stopped in front of her home on Bagatelle Road, Melville, Long Island, New York (hereinafter Bagatelle Road), when she was struck while

crossing the street to the bus, by a vehicle operated by Amna Atiq (hereinafter Atiq) and owned by Rohmen Atiq. The school bus, allegedly owned by Educational Bus Transportation, Inc., was being operated by Piters Calixte (hereinafter Calixte). Causes of action in negligence have been asserted against the defendants. A derivative cause of action has been asserted by Jie Han, father of the infant plaintiff.

The defendants, School District, Calixte, Educational Bus Transportation, Inc. and Educational Bus, Inc. (hereinafter Educational Bus), now move for summary judgment in their favor dismissing the complaint on the basis they bear no liability for the accident and were not the proximate cause of the accident, which accident they claim was caused solely by the negligence of Atiq.

The 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 eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v N.Y.U. Medical Center***, *supra*). Once such proof has been produced, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form sufficient to require a trial of any issue of fact (***Joseph P. Day Realty Corp. v Aeroxon Prods.***, 148 AD2d 499, 538 NYS2d 843 [1979], ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980].) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.***, 79 AD2d 1014, 435 NYS2d 340 [1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (***Friends of Animals v Associated Fur Mfrs.***, 46 NY2d 1065, 416 NYS2d 790 [1979]).

In support of this motion, the moving defendants have submitted, inter alia, an attorney's affirmation, copies of the pleadings, answers and verified bill of particulars, copies of the transcripts of the examinations before trial (hereinafter EBT) of the plaintiff, Stephen Troy, dated March 5, 2008, on behalf of the School District, Calixte dated January 8, 2009, non-party witness from Educational Bus, James Rogan (hereinafter Rogan) dated June 1, 2009, and non-party witness Candace Baird dated April 8, 2009.

In opposing this motion, the plaintiffs have submitted, inter alia, an attorney's affirmation, a copy of the Atiq EBT, dated January 8, 2009, photographs, a copy of a bus route and various documents.

In opposing this motion, the Atiq defendants have submitted an attorney's affirmation and a copy of the Atiq EBT.

At her EBT on March 5, 2008, the plaintiff testified that on October 31, 2007 she was in the tenth grade at the School District's High School East. Her morning school bus stop was across the street from her home, so she had to cross Bagatelle Road to get onto the bus. In the afternoon, her bus stop was on the same side of the street as her home and she did not have to cross the street when she left from the bus. She described Bagatelle Road as a two-lane road with one lane in each travel direction, separated by a double yellow line. The road in front of her house is straight and flat. The School District had notified her concerning where her bus stop would be at the beginning of the school year. The bus stopped in front of her home and she was the first student to be picked up in the morning at about 6:30 a.m. along with two other students. The bus driver had instructed her previously to look both ways before crossing the street and told her he would give her a hand signal to cross. The bus had a blinking red stop light and front lights and a stop sign which extended from the front left side of the bus on the driver's side when the bus was stopped to pick her up on prior occasions. She usually crossed the street in front of the bus. She had no recollection of being struck by the Atiq vehicle or the events surrounding the accident. After the accident, her last recollection was from the evening before the accident.

At her EBT on January 8, 2009 Atiq testified that on October 31, 2007 she was eighteen years of age and a student in her senior year at the School District's High School West. She was a licensed driver and was wearing contact lenses for distance at the time of the accident. Her father was the owner of the vehicle she was operating. The accident occurred on Bagatelle Road, which roadway had two travel lanes, one northbound and one southbound divided by a double yellow line. She was traveling to her high school at about 6:30 a.m. and it was dark out. Her headlights were on and the car was operating without any problems. She was traveling on Bagatelle Road for about a half mile but wasn't sure if she was going north or south in light travel conditions with no cars in front or behind her and she noticed no cars traveling in the opposite direction prior to the accident. She saw the back of a yellow school bus just before the accident occurred when she was about four or five car lengths behind it. She was traveling about twenty to twenty five miles per hour. She stated the school bus was stopped, and part of it was parked on the shoulder on the side of the road by the white line and about half of the school bus was on the road in the travel lane. The school bus had its flashing yellow lights on. She drove past the school bus, not applying her brakes or speeding up. She was not sure if there was enough room for her to pass by the bus with her vehicle and remain in her lane of travel. She was unsure if the tires on the left side of her vehicle crossed over the double yellow line as she passed by the bus. Her vehicle had fully passed the school bus by about two car lengths when the contact occurred with the girl who was on her side of the road over the double yellow line. She did not know how far over the double yellow line the girl was before the impact, but then she testified that she did not see the girl at any time prior to the impact. She realized that there was some sort of a collision between her vehicle and something else when she saw her windshield crack. There was nothing obstructing her vision as she passed the school bus. The road was straight and flat. When her car came to a stop after the impact, she had passed by one house and pulled over to the shoulder. She got out of her vehicle and saw the girl face down on the road about two car lengths ahead of the school bus. The girl was moving but did not respond to her. She never saw red flashing lights on the bus, never saw a stop sign extended from the bus, and did not notice if the headlights on the school bus were on prior to the impact.

The EBT testimony of the additional witnesses establishes prima facie that the School District bears no liability for the occurrence of the accident. The School District had a five year contract with Educational Bus for the bus route involved in the accident. The bus driver, Calixte, was an employee of Educational Bus. The bus route was set up for the School District by a company called Educational Logistics Company, located in Montana, which devised the computerized routing and GPS locating system for the buses. The bus company was then provided with the names and addresses and number of children for each particular bus, along with information such as dead end streets or double-lined highway streets. A bus driver could change the order of the stops with the authorization from the School District. The school bus drivers made "dry runs" before the start of the school year without students on board and notified the School District's transportation office if the driver felt there might be a problem with the school bus stop. The School District's transportation office would designate an individual bus stop for a student if information was received that a bus stop was not safe or not sufficient for a particular student and would make changes accordingly. Here, the route provided by the School District to the bus company provided that the plaintiff was to be picked up with another student at Bagatelle Road and Sorrell Hill Court. The Bagatelle Road/Sorrell Hill Court bus stop was about two to three-tenths of a mile north of the plaintiff's home on the east side of Bagatelle Road so she would not have to cross Bagatelle to the west side to get to her bus stop. Instead, she would just walk along the east side of the road to get her bus. She would have to cross Chateau Road, however, to get onto the bus. The testimony establishes there should not be any bus stop on Bagatelle Road which would require a student to crossover as the School District did not want to see any student crossing a double-lined highway. Any double-lined road, a roadway in which traffic was traveling forty miles an hour, or a road that had a significant amount of commercial traffic would be deemed a hazardous road and the School District had a rule that students on any grade level should not be crossing Bagatelle Road or any two-lane highway to get on the school bus. The School District had no record of anyone making a change in the bus stop for the plaintiff and its records indicated that the plaintiff's designated bus stop was not across the street from her house and if such a change request had been made, it would not have been granted as such a stop would require that she cross over Bagatelle Road. A letter had been sent to the parents of Maggie Han designating Sorrell Court as her bus stop.

No party has submitted any evidentiary proof to raise a factual issue to preclude summary judgment being granted to the School District.

Accordingly, summary judgment is granted to the defendants the Board of Education of Half Hollow Hills Central School District and Half Hollow Hills Central School District dismissing the complaint as asserted against them.

The defendants Calixte, Educational Bus and Educational Bus Transportation Inc. have not established prima facie entitlement to summary judgment dismissing the complaint as there are factual issues raised in the moving papers which preclude summary judgment, including, but not limited to, whether Educational Bus received permission to change the bus route, whether Calixte had received permission from the bus company to change the bus route, and whether the Educational Bus company permitted crossover pickups and dropoffs of students on Bagatelle Road. Calixte testified he had several students on that route who were crossovers and Rogan (from Educational Bus) testified that the driver had to note on the "left/right sheets" indicating

there were students who had to crossover on the route. Calixte testified he had permission through the dispatcher to pick up the plaintiff in front of her house. Rogan testified he was not aware of any paperwork wherein Calixte was authorized by Educational Bus to pick up the plaintiff at a bus stop other than the one designated by the School District.

There are further factual issues which preclude summary judgment to Calixte and Educational Bus. Although Calixte and Candace Baird both testified that Calixte's bus was stopped on the northbound travel lane of Bagatelle Road, with its red lights flashing and the stop sign turned out when the accident occurred, Atiq testified that the school bus was pulled over to the shoulder side of the travel lane when she passed it, and that the bus did not have its flashing red lights on.

Accordingly, summary judgment dismissing the complaint is denied as to Calixte Educational Bus and Educational Bus Transportation, Inc..

Dated: April 14, 2010



J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION