

Brown v New York City Tr. Auth.

2008 NY Slip Op 33216(U)

November 24, 2008

Supreme Court, New York County

Docket Number: 100167/08

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

BROWN, DWAYNE

Plaintiff,

-v-

NEW YORK CITY TRANSIT AUTHORITY, et al.,
Defendants.

INDEX NO. 100167/08

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL NO. _____

The following papers, numbered 1 to 6 were read on this motion for Summary Judgment

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

FILED
DEC 03 2008

COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this motion for summary judgment is decided as follows:

This is an action for personal injuries allegedly sustained by plaintiff as a result of an alleged incident which occurred on January 26, 2007 while the plaintiff was allegedly a passenger in an Access-A-Ride vehicle traveling on Gun Hill Road in the Bronx, New York. The vehicle was being driven by Jose Rodriguez and was owned by American Transit Inc. (hereinafter "American Transit"). Specifically, the plaintiff alleges that while a passenger on the Access-A-Ride vehicle he was caused to fall out of his wheelchair and sustained an injury.

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Plaintiff commenced this action in New York County against the New York City Transit Authority (hereinafter "NYCTA"), Mr. Rodriguez and American Transit.

Plaintiff now seeks an order transferring the venue of this action to the Bronx County, and, extending the time for plaintiff to file his Note of Issue. The NYCTA cross-moves for an order pursuant to CPLR §3212 granting summary judgment in favor of it on the grounds that the plaintiff fails to state a claim upon which relief can be granted against it.

APPLICABLE LAW & DISCUSSION

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). "But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trial calendar and thus deny to other litigants the right to have their claims promptly adjudicated" (Andre v Pomeroy, 35 NY2d 361 [1974]).

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212[b]), and must do so by tender of evidentiary proof in admissible form.

In the instant case, the plaintiff's allegations against the NYCTA in the summons and complaint are that the NYCTA owned, operated, managed, maintained and controlled the Access-A-Ride vehicle that the plaintiff was allegedly a wheelchair bound passenger on the date of the alleged accident. However, the NYCTA contends that it does not own, operate, manage, maintain or control said vehicle, and thus no cause of action can be maintained against it.

In support of its position, the NYCTA submits an affidavit from Laureen Coyne, an employee of the Metropolitan Transportation Authority, and currently the Director of Risk and Insurance Management. Ms. Coyne states in her affidavit that there is a vehicle lease agreement between the NYCTA and American Transit dated September 26, 2001, which was in effect on the date in question. Additionally she avers that the NYCTA retained title to the vehicle, however, the vehicle was registered in the name of American Transit, and as such, the NYCTA did not operate, manage, maintain, or control the Access-A-Ride vehicle on the date in question.

The NYCTA argues that it is entitled to summary judgment because pursuant to 49 USC §30106, also known as the "Graves Amendment," it cannot be held vicariously liable for the negligence of American Transit based solely on being the lessor of the vehicle. The NYCTA further argues that it is entitled to summary judgment because the Graves Amendment effectively preempts all state laws holding motor vehicle owners vicariously liable for the negligence of a driver, provided that the owner engaged in the business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner.

Plaintiff contends that the NYCTA is not entitled to summary judgment because the NYCTA is not in the business of renting or leasing motor vehicle, and thus not within the class to which the Graves Amendment applies and/or protects.

Vehicle and Traffic Law §388 holds an owner of a vehicle that is used or operated in this state, liable for any injuries to a person resulting from the negligent operation or use of that motor vehicle. The statute provides:

"Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owners. Whenever any vehicles as

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hereinafter defined shall be used in combination with one another, by attachment or tow, the person using or operating any one vehicle shall, for the purposes of this section, be deemed to be using or operating each vehicle in the combination, and the owners thereof shall be jointly and severally liable hereunder”

(Vehicle and Traffic Law §388 [1]). The legislation “expresses the policy that one injured by the negligent operation of a motor vehicle should have recourse to a financially responsible defendant” (Graham v Dunkley, 50 AD3d 55 [2d Dept 2008]). New York, Maine, and Rhode Island are now the only states that have statutes purporting to impose vicarious liability for an unlimited amount of damages on car owners, including lessors (id.).

Vehicle and Traffic Law §128 defines the term “owner” as:

“A person, other than a lien holder, having the property in or title to a vehicle or vessel. The term includes a person entitled to the use and possession of a vehicle or vessel subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle or vessel having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.”

New York courts have held that the owners of leased vehicles are vicariously liable under section 388 of the Vehicle and Traffic Law for the negligent operation of those vehicles (see Litvak v Fabi, 8 AD3d 631, 632 [2d Dept 2004]). Here, NYCTA does not dispute that it is the title owner of the Access-A-Ride vehicle operated by Mr. Rodriguez on the date of the accident. Thus, under Vehicle and Traffic Law §388, NYCTA , as owner of the vehicle in question, is responsible for damages arising from Rodriguez’s negligent operation of the vehicle.

At issue here, however, is 49 USC §30106. In the case at bar, plaintiffs dispute that NYCTA is in the business of renting or leasing motor vehicles. The lease between the NYCTA and American Transit for the subject vehicle in question is not dispositive on the issue of whether the NYCTA is in the business of renting or leasing vehicles. As such, since no other

evidence has been presented by NYCTA to establish that it is in the business of renting or leasing vehicles, its cross-motion must be denied.

Plaintiff's motion is granted to transfer venue to Bronx County pursuant to CPLR § 505(b), because the cause of action arose in Bronx County and the NYCTA is a defendant (see Hes v NYCTA, 25 AD3d 762 [2nd Dept 2006]). NYCTA's arguments in opposition are unpersuasive.

Accordingly it is

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Bronx, and the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Bronx upon service of a copy of this order with notice of entry and payment of appropriate fees, if any; and it is further

ORDERED that the Note of Issue is extended without opposition to March 1, 2009; and it is further

ORDERED that the cross-motion for summary judgment is denied.

Dated:

11/24/08

J.S.C.
J.S.C.

Check on:

FINAL DISPOSITION

NON-FINAL DISPOSITION

FILED

DEC 03 2008

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NEW YORK