

Shaniya B. v New York City Tr. Auth.

2015 NY Slip Op 30088(U)

January 16, 2015

Supreme Court, New York County

Docket Number: 156620/2013

Judge: Michael D. Stallman

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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. MICHAEL D. STALLMAN
Justice

PART 21

SHANIYA B., an infant, over the age of 14 years by her
Parent and Natural Guardian, SUKWANA B. &
SUKWANA B., Individually,

INDEX NO. 156620/2013

MOTION DATE 11/18/14

Plaintiffs,

- v -

MOTION SEQ. NO. 002

NEW YORK CITY TRANSIT AUTHORITY &
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY, MELVA HERNANDEZ and
IVY L. GRANT,

Defendants.

The following papers, numbered 19-24, 26-28, 31, were read on this motion for summary judgment

Notice of Motion—Affirmation— Exhibits A-D

█ No(s). 19-24

Affirmation in Opposition — Exhibit A —Affirmation of Service;

█ No(s). 26-28; 31

Affirmation in Opposition

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Upon the foregoing papers, it is ordered that this motion for summary judgment by defendants New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority and Melva Hernandez is granted in part, and the complaint is dismissed as against defendant New York City Transit Authority with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant, and cross claims by and against defendant New York City Transit Authority are dismissed; and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that the action is severed and continued against the remaining defendants Ivy Grant, MABSTOA and Melva Hernandez.

(Continued. . .)

***Shaniya B. v New York City Tr. Auth.*, Index No. 156620/2013**

This action arises out of a motor vehicle collision on October 21, 2012 between a bus and a vehicle on East 125th Street near the entrance to the Robert F. Kennedy Bridge in Manhattan. Plaintiffs allege that the bus is owned by defendants New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority and was operated by defendant Melva Hernandez. Defendant Ivy Grant admitted that she is the owner and operator of the second vehicle.

Plaintiffs allege that they were passengers aboard the bus. Shavonna Jones was an alleged passenger in Grant's vehicle.

Two other actions have been commenced arising out of this accident, *Jones v Grant*, Index No. 150094/2014 and *Kanneh v New York City Tr. Auth.*, Index No. 154138/2013. By a stipulation dated June 20, 2014, the parties in all three actions stipulated that "the actions be joined for purposes of discovery and trial and that they be tried together for the purposes of liability and comparative fault only."

Defendants New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) and Melva Hernandez move for summary judgment dismissing the action and all cross claims as against them. Motions for summary judgment were made in all three actions based on the same arguments and evidence.

In support of their motion, movants submit video footage taken from cameras aboard the bus and a printout of data retrieved from the engine control module of the bus. (Defendants' Exs C, D.)

As a threshold matter, movants have not demonstrated that issue has been joined with respect to defendants MABSTOA and Hernandez. The answer submitted on this motion appears to be only on behalf of the New York City Transit Authority. (Hanney Affirm., Ex B.)

(Continued. . .)

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The New York City Transit Authority (NYCTA) has met its prima facie burden of entitlement to summary judgment as a matter of law. The Court agrees with the NYCTA that Grant's vehicle abruptly turned in front of the bus, which was lawfully traveling in a lane of traffic. The video footage shows that the bus was traveling in a lane of traffic, when, at 18:01:31, a vehicle to the left of the bus crosses into the bus's lane of traffic, and makes a right turn in front of the bus at 18:01:32. At 18:01:33, the footage shows the Grant vehicle with an impact to its rear right door. Thus, the impact occurs within 2 seconds after the Grant vehicle crosses into the bus's lane of traffic. The video footage conclusively establishes, as a matter of law, that defendant Hernandez had no opportunity to avoid the impact. The data from the engine control module indicates that bus was not traveling in excess of the speed limit before impact.

Summary judgment with respect to the NYCTA is not premature. Although the parties have not been deposed, and although the video footage does not depict the operation of Grant's vehicle in the seconds before Grant's vehicle crosses into the bus's lane, Grant, who is a defendant in all three actions, did not submit an affidavit in opposition to raise any questions of fact as to the negligent operation of the bus. (*Al-Nashash v Soutra Limousine Inc.*, 115 AD3d 534 [1st Dept 2014].)

Finally, the motion papers were not procedurally defective. Insofar as all three actions were only joined for trial and discovery, and not consolidated into one action, it was proper for movants to bring separate motions in all three actions, to ensure an adequate and proper record in the event of an appeal in each action. Although Grant's answer was not submitted with their moving papers, the movants cured any deficiency by submitting Grant's answer as an exhibit to the reply affirmation of movants' counsel. (*see Pandian v New York Health & Hosps. Corp.*, 54 AD3d 590 [1st Dept 2008].) Grant also previously electronically filed her answer, and thus her answer was available to the parties and the court. (*Studio A Showroom, LLC v Yoon*, 99 AD3d 632, 632 [1st Dept 2012].)

(Continued. . .)

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Therefore, summary judgment is granted only as to the NYCTA, and the motion is otherwise denied, without prejudice to another motion for summary judgment by defendants Manhattan and Bronx Surface Transit Operating Authority and Melva Hernandez upon proof that they also answered the complaint.

Dated: 1/16/15
New York, New York


HON. MICHAEL D. STALLMAN
J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE