

Torres-Gomez v Veolia Transp. Servs.

2017 NY Slip Op 33445(U)

January 30, 2017

Supreme Court, Nassau County

Docket Number: Index No. 601003/17

Judge: Anna R. Anzalone

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



SUPREME COURT - STATE OF NEW YORK

PRESENT: Honorable Anna R. Anzalone
Justice of the Supreme Court

-----X

Margarita Torres-Gomez and Francisco
Arenas, Individually and as Husband and
Wife,

Plaintiffs,

TRIAL/IAS, PART 20
NASSAU COUNTY

Index No. 601003/17

- against -

Motion Seq. No.: 1 & 2

Veolia Transportation Services,

Defendants.

-----X

The following papers read on this motion:

Motion Seq. #1:	
Defendant's Notice of Motion	1
Motion Seq. #2:	
Plaintiffs' Cross Motion	1
Defendant's Affirmation in Opposition.....	2

This motion by the defendant for an order pursuant to CPLR 3211 (a) (7) dismissing the complaint and cross-motion by the plaintiffs for an order pursuant to CPLR 3025 seeking leave to amend their complaint are determined as provided herein.

The plaintiff in this case seeks to recover damages for personal injuries she sustained when she fell on bus # 1766 on January 1, 2015. She commenced this action on February 3, 2017, against the defendant Veolia Transportation. In her complaint, the plaintiff alleges that on the day of her accident, the defendant owned, managed, maintained, controlled, operated, supervised and inspected the subject bus and that it was its duty to maintain it in a safe condition. Finally, she alleges that the defendant was negligent in allowing a dangerous condition to exist on the bus which it knew about or should have known about which caused her to fall.

The defendant seeks dismissal of the complaint against it on the ground that it did not own the bus at the time of the plaintiff's accident. The defendant alleges that it became Transdev Services, Inc. on August 13, 2014. It maintains that a search of its database readily revealed that before this action was commenced. Similarly, an internet search of the County bus system would have revealed the County's relationship with Transdev Services, too, and Veolia is not mentioned. In addition, the defendant maintains that because it is an agent of the County, the shortened Statute of Limitations applicable to the County of one year and ninety days applies (see General Municipal Law § 50-i) here, thereby precluding an amendment of the plaintiff's complaint to name Transdev Services since the action was untimely when it was commenced.

Contrary to the plaintiff's allegation, via records of the NYS Department of State, Division of Corporations, the defendant has clearly established that Veolia Transportation simply became Transdev Services, Inc. on August 13, 2014, before this action was commenced. However, the Secretary of State forwarded the Summons and Complaint that were served on it to Transdev Services at the address provided by either it, Veolia or both companies.

"Pursuant to CPLR 305(c), '[a]t any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced.'" Here, the plaintiff did not seek to add a new party. Rather, it merely sought to amend the caption to reflect that the defendant's name had been changed' " (*Sports Advisory Group v Long Is. Lizards*, 142 AD3d 605, 606 [2d Dept 2016], citing *Ober v Rye Town Hilton*, 159 AD2d 16 [2d Dept 2990]). Since the defendant has failed to establish that it would be prejudiced by the amendment, the motion is granted.

At this juncture, the defendant Transdev Services has not established its entitlement to dismissal of the complaint as untimely. General Municipal Law § 50-i applies to tort claims against cities, counties, towns, villages, fire districts or school districts or of any officers, *agents* or employees thereof, including volunteer firemen

of any such cities, counties, towns, villages, fire districts or school districts or any volunteer fireman whose services have been accepted pursuant to the provisions of section two hundred nine-i of that chapter. While Transdev Services maintains that it is the County's agent in operating the bus system in Nassau County, Transdev Services' relationship with the County has not been clearly established.

"It is clear that the one-year-and-90-day limitations period of General Municipal Law § 50-i and the notice of claim requirement of General Municipal Law § 50-e apply to the claims against [a defendant] if the ... County of Nassau is obligated to indemnify [it]" (*Intl. Shared Services, Inc. v County of Nassau*, 222 AD2d 407, 408 [2d Dept 1995]). However, it is unclear whether that is the case here. In fact, the defendant makes reference to Nassau County Local Law 2011-10 whereby the County contracted with Veolia to operate the bus transit system but the contract- which is part of the Local Law- does not obligate the county to indemnify Veolia; Rather, it obligates Veolia to indemnify and hold harmless the County, its officers, employees, representatives and agents from and against any and all liabilities, losses, costs and expenses arising out of or in connection with any acts or omissions of Veolia regardless of whether taken pursuant to or authorized by their Agreement and regardless of whether due to negligence, fault or default. Here, there is at a minimum, a question of fact as to whether Transdev Services is acting as the County's agent in

operating the bus system. *Encore Lake Grove Homeowners Ass'n, Inc. v Cashin Assoc., P.C.*, 111 AD3d 881, 884 (2d Dept 2013); compare, *Stekolschik v Star Cruiser Transp., Inc.*, 8 Misc 3d 1023(A) (Sup Ct Kings County 2005) (“Pursuant to the Lease dated August 17, 2001, an agency arrangement, or joint service arrangement, was created between Star and the MTA, thereby entitling Star, as MTA's agent, to all the ‘privileges, immunities, tax exemptions and other exemptions of the Authority and of the Authority's property, functions and activities’ and subjecting it to suit in accordance with Section 1276 of the Public Authorities Law”); *Altro v Conrail*, 129 Misc 2d 1061, 1062 (App Term 1985), *affd*, 130 AD2d 612 (2d Dept 1987) (“when the Legislature appropriated \$44,400,000 for the rehabilitation and modernization of commuter service upon the Harlem and Hudson divisions of the Penn Central, it provided that the assets of any private carrier which executed a joint service arrangement with the MTA would be deemed a “railroad facility” and “transportation facility” of the MTA for all purposes of Public Authorities Law, article 5, title 11 (L 1970, ch 473). From this we conclude that Conrail was providing an essential government function and as such was entitled to the same immunity as the MTA would enjoy”). All that is offered here to establish the County’s relationship with Transdev Services are allegations by counsel which hardly constitute evidence sufficient to establish that Transdev Services stands in the County’s shoes with

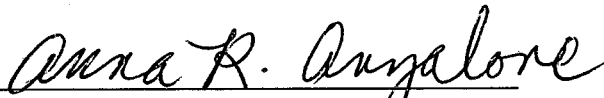
respect to the applicable Statute of Limitations.

Finally, the negligence cause of action has been adequately pled.

In conclusion, the defendant's motion is denied, without prejudice, with respect to its application to dismiss the complaint as untimely and the plaintiff's cross-motion for leave to amend its summons and complaint to substitute the proper defendant is granted.

DATED: January 30, 2017

ENTER:


Hon. Anna R. Anzalone JSC

ENTERED
FEB 02 2018
NASSAU COUNTY
COUNTY CLERK'S OFFICE