

**Castillo v City of New York**

2019 NY Slip Op 30106(U)

January 11, 2019

Supreme Court, New York County

Docket Number: 156679/2014

Judge: Adam Silvera

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 OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

INDEX NO. 156679/2014

KERIDE CASTILLO,

MOTION DATE 01/02/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, AMBOY BUS CO., INC. AND, WESLEY FONTUS, ANGELA PIMENTEL, LOGAN BUS CO., INC.

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is

Upon the foregoing documents, it is ordered that defendant Amboy Bus Co., Inc.'s (hereinafter referred to as "defendant Amboy") motion for summary judgment dismissing the complaint as against it is granted.

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". Winegrad v New York University Medical Center, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]". Zuckerman v City of New York, 49 NY2d 557, 560 (1980). Defendant Amboy moves for summary judgment to dismiss the complaint and all cross claims against it, arguing that, at the time of the accident, it did not own the vehicle which struck plaintiff, and,

thus are not liable for any of plaintiff's alleged injuries. Plaintiff, and co-defendants oppose and defendant Amboy replies.

Here, plaintiff was a passenger in a vehicle owned and operated by defendant Angela Pimentel when such vehicle was involved in a motor vehicle accident with a school bus on January 15, 2014. In support of the instant motion, defendant Amboy proffers a fully executed Sales Agreement which establishes that the school bus in question was sold by defendant Amboy to co-defendant Logan Bus Co. (hereinafter referred to as "defendant Logan"). In further support, defendant Amboy proffers a fully executed Vehicle Lease Agreement which specifically states that "pending the re-certification, re-registration and/or re-inspection of the [school bus in question, defendant Amboy] have agreed to lease [said school bus] to [defendant Logan]". In further support, defendant Amboy proffers, *inter alia*, the deposition transcript of Mr. Corey Muirhead, the Director of Contracts and Business Development for defendant Logan. During his deposition, Mr. Muirhead testified that the school bus was purchased by defendant Logan on "[t]he date the agreement was signed". A review of the Sales Agreement and the Vehicle Lease Agreement reveal that the agreements were signed on December 24, 2013. Thus, defendant Amboy has met their burden in establishing entitlement to summary judgment dismissing the action against them, as it has been established that, at the time of the accident, defendant Amboy did not own the school bus involved in the motor vehicle accident. Thus, the burden shifts to co-defendants and plaintiff to raise a genuine issue of triable fact.

Plaintiff opposes the motion, and co-defendants adopt and incorporate plaintiff's arguments in opposition. Plaintiff argues that issues of fact exist as the Sales Agreement and the Lease Agreement are contradictory in that defendant Amboy could not lease a vehicle which it already sold. Plaintiff argues that Mr. Muirhead, upon being shown the police accident report for

the subject accident, testified that he did not know which entity owned the school bus on the date of the accident. Plaintiff, further argues that Mr. Muirhead's testimony states that the purchase agreement was not in effect until mid-January. However, a review of the full transcript of Mr. Muirhead's deposition testimony reveals that, upon reviewing documents to refresh his recollection, Mr. Muirhead testified that the school bus was purchased by defendant Logan, from defendant Amboy, on December 24, 2013, the date the agreement was signed. In fact, the Sales Agreement explicitly states that the effective date of the contract is December 24, 2013. Moreover, Mr. Muirhead testified that he had knowledge of an agreement between defendant Amboy and defendant Logan, which was worked out in bankruptcy court, wherein defendant Logan purchased the school bus in question and would operate such school bus under defendant Amboy's registration while the Department of Motor Vehicles processed the transfer of title. He further testified that defendant Logan took possession of the school bus the week of New Years Eve and New Years Day after which the school bus went into immediate service when school recommenced in January 2014 after the new year.

Here, the documents and testimony establish that the school bus was purchased by defendant Logan, from defendant Amboy, on December 24, 2013. Defendant Logan took possession of the school bus during the week of new years eve and new years day 2013-2014, and that the school bus went into service when school recommenced in January 2014 under defendant Logan's possession, custody, and control. The Lease Agreement permitted defendant Logan to operate the school bus under defendant Amboy's registration until the Department of Motor Vehicles could process the transfer of title. Thus, on the date of the accident, it has been established that defendant Logan owned the school bus in question, and plaintiff has failed to

raise any triable issues of fact such that defendant Amboy's motion for summary judgment is granted and this action is dismissed as against it only.

Accordingly, it is

ORDERED that defendant Amboy Bus Co., Inc.'s motion for summary judgment to dismiss this action as against it is granted and this action is dismissed as to defendant Amboy Bus Co., Inc. only; and it is further

ORDERED that any and all cross-claims against defendant Amboy Bus Co., Inc. is dismissed; and it is further

ORDERED that the claims against the remaining defendants are severed and the balance of the action shall continue; and it is further


ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Amboy Bus Co., Inc. dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that within 30 days of entry, defendant Amboy Bus Co., Inc. shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

1/11/2019

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE