

Patterson v NXK Corp.
2019 NY Slip Op 32408(U)
August 13, 2019
Supreme Court, New York County
Docket Number: 151641/2014
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
ROBIN PATTERSON,

Plaintiff,

-against-

NXK CORP. D/B/A AMBU TRANS AMBULETTE,

Defendant.
-----X

CAROL R. EDMEAD, J.S.C.:

DECISION AND ORDER

Index No.: 151641/2014

Motion Sequence 005

MEMORANDUM DECISION

In this personal injury action, defendant NXK Corp. d/b/a Ambu Trans Ambulette moves for summary judgment pursuant to CPLR 3212. In reply, plaintiff Robin Patterson opposes the motion. For the reasons set forth below, the Court grants Plaintiff's motion in its entirety.

BACKGROUND FACTS

This is an action for damages stemming from a personal injury sustained by Plaintiff. On October 17, 2013, Plaintiff was being transported home in an ambulette from Mt. Sinai Hospital. Plaintiff alleges that her wheelchair was not securely fastened in the ambulette and that when the driver stopped short she fell and sustained various injuries (NYSCEF doc No. 83 at 1). Plaintiff commenced this action in 2014 against Defendant under the belief that Defendant was the owner and operator of her ambulette. Defendant disputes this and has moved for dismissal as its internal records show that while one of Defendant's ambulettes drove Plaintiff to Mt. Sinai, the return trip back to her home was cancelled. Defendant contends that Plaintiff must have used another ambulance service on her ride home. Plaintiff, in reply, argues that the record alone is

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insufficient and that there is a question of fact regarding whether Defendant operated the ambulette that was involved in Plaintiff's accident.

DISCUSSION

Summary judgment is granted when “the proponent makes ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,’ and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also, *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). When the proponent fails to make a prima facie showing, the court must deny the motion, “regardless of the sufficiency of the opposing papers” (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

Here, the Court finds summary judgment is an appropriate remedy for Defendant as Plaintiff has failed to establish any triable issues of fact in her opposition. Defendant has produced testimony from its owner, driver and dispatcher consistently stating that Plaintiff was not traveling in one of its vehicles on her ride home from Mt. Sinai. Plaintiff stated in deposition that she traveled home after coming out of anesthesia and had her health aide call for transportation home (NYSCEF doc No. 85 at 47). Plaintiff also stated that her trips to the

hospital, which are arranged through her insurance carrier, are sometimes made with other ambulance services. Defendant commenced an audit trail to check the trip history and noted that while Plaintiff was taken to the hospital in one of their ambulances, the return trip, scheduled for 7 p.m. on October 17, was cancelled at 5:29 p.m (*id.* at 3). According to Defendant's testimony, this audit trail cannot be modified or tampered with after it is recorded. Defendant's owner also cross checked the driver log of the driver who took Plaintiff to the hospital and who Plaintiff also alleges took her home (NYSCEF doc No. 93 at 39). Defendant also cross checked the cancellation with Plaintiff's insurance carrier. In her opposition, Plaintiff states that Defendant is solely relying on an "unauthenticated printout of what is purported to be Plaintiff's trip history," but that is clearly a misrepresentation of the steps Defendant took to ensure that it was not operating Plaintiff's ambulance (NYSCEF doc No. 87, ¶ 43). Plaintiff has also not produced any sort of police report, ambulance report or any other evidence that establishes she was in one of Defendant's vehicles during the accident. As Defendant, in comparison, has produced ample documentary evidence demonstrating it did not operate the ambulance involved in the accident, Defendant is entitled to summary judgment.

Therefore, the complaint is dismissed in its entirety.

CONCLUSION

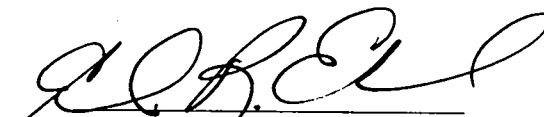
Based on the foregoing, it is hereby

ORDERED that Defendant NXX Corp. d/b/a Ambu Trans Ambulette's motion for summary judgment is granted in its entirety; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that counsel for Defendant shall serve a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

Dated: August 13, 2019



Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.