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| <b>Reid v New York City Tr. Auth.</b>  |
| 2020 NY Slip Op 34268(U)   |
| December 18, 2020  |
| Supreme Court, New York County   |
| Docket Number: 161099/2019   |
| Judge: Suzanne J. Adams  |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. SUZANNE J. ADAMS PART IAS MOTION 21

*Justice*

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MICHELE REID, INDEX NO. 161099/2019  
MOTION DATE N/A  
MOTION SEQ. NO. 001

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,  
METROPOLITAN TRANSPORTATION AUTHORITY, UBER  
TECHNOLOGIES, INC., LYFT, INC., ALEKSEY MARFIN,  
ANA CAJIAS

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that defendant Ana Cajias' motion for summary judgment on the issue of liability and plaintiff's cross-motion for summary judgment on the issue of liability are granted. In this personal injury action, plaintiff alleges that on September 23, 2019, she was a passenger in a motor vehicle being operated by defendant Cajias when it was rear-ended by a vehicle owned and operated by defendants Metropolitan Transportation Authority ("MTA") and Aleksey Marfin, respectively. Both the movant and cross-movant proffer the affidavit of defendant Cajias in which she states that she was operating her vehicle east bound on 54<sup>th</sup> Street in Manhattan, with plaintiff as her passenger, and came to a stop at a red light at the corner of Broadway. Defendant Cajias further states she was stopped for a couple of seconds when she felt an impact toward the rear of her vehicle.

Defendant Cajias now moves pursuant to CPLR 3212 for summary judgment as to liability, seeking dismissal of plaintiff's complaint and all cross-claims as against her. Plaintiff now cross-moves pursuant to CPLR 3212 for summary judgment against defendants MTA, Marfin and New York City Transit Authority (collectively the "Authorities") as to liability only. The Authorities oppose plaintiff's cross-motion.

It is well-settled that "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 demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). "[A] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident". *Cruz v. Lise*, 123 A.D.3d 514 (1<sup>st</sup> Dep't 2014). Furthermore, a plaintiff who establishes that he or she was an innocent passenger is entitled to summary judgment on the issue of liability. *See Mello v. Narco Cab Corp.*, 105 A.D.3d 634, 635 (1<sup>st</sup> Dep't 2013).

Here, both defendant Cajias and plaintiff have made a *prima facie* showing of entitlement to summary judgment on the issue of liability. The evidence presented establishes that defendant Cajias' vehicle, with plaintiff as a passenger, was stopped at a red light at the time her vehicle came into contact with the Authorities' bus. As such, neither defendant Cajias nor plaintiff can be shown to have engaged in any culpable conduct in connection with the disputed incident, as a matter of law. The Authorities have not presented any evidence of any non-negligent explanation for the rear-end collision. Accordingly, it is hereby

ORDERED that defendant Ana Cajias' motion for summary judgment as to liability is granted and the complaint and all cross-claims as against her are dismissed in their entirety, with costs and disbursements to said defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendant Ana Cajias; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendant Ana Cajias NYCTA shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website as the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that plaintiff's cross-motion for summary judgment on the issue of liability is granted and any affirmative defenses with respect to comparative fault, culpable conduct and assumption of risk are dismissed with prejudice; and it is further

ORDERED that discovery with respect to plaintiff's damages claims shall proceed, and within 60 days from entry of this order, the parties herein shall confer with one another and

submit to the court, via email to the Part Clerk of Part 21 and as per the Part Rules of Part 21, a draft Preliminary Conference Order, agreed upon by all parties, to be "so-ordered" by the court.

This constitutes the decision and order of the court.



12/18/2020

DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE