

**Valenti v Metropolitan Transp. Auth.**

2020 NY Slip Op 34415(U)

December 11, 2020

Supreme Court, Bronx County

Docket Number: 300333/10

Judge: Elizabeth A. Taylor

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, I.A.S. PART 2  
ROBERTO VALENTI, JESSICA VALENTI,  
DAVID CHARLES, DARRYL DOUGLAS, NANCY  
DOUGLAS, CLAUDIO FONTANA, KAREN FONTANA,  
JASON LAWRENCE and NARESHA LAWRENCE,  
Plaintiffs,

Index No. 300333/10

**DECISION/ORDER**

**Present:**  
**HON. ELIZABETH A. TAYLOR**

-against-

THE METROPOLITAN TRANSPORTATION  
AUTHORITY, TRIBOROUGH BRIDGE AND TUNNEL  
AUTHORITY, VILLAGE DOC, INC., LUIS EDUARDO  
MENDOZA a/k/a MENDOZA, LUIS EDUARDO,  
BUILDING MATERIALS CO. OF AMERICA a/k/a  
BLDING MTRIALS CO OF AME, JAMES T. SMITH a/k/a  
SMITH, JAMES T., THE CITY OF NEW YORK, THE  
NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION, MTA BRIDGES AND TUNNELS,  
and E. E. CRUZ AND COMPANY, INC.,  
Defendants.

THE METROPOLITAN TRANSPORTATION  
AUTHORITY and TRIBOROUGH BRIDGE AND  
TUNNEL AUTHORITY,  
Third-Party Plaintiffs,

Index No.

-against-

AMERICAN BRIDGE COMPANY,  
Third-Party Defendant.  
AMERICAN BRIDGE COMPANY,  
Second Third-Party Plaintiff,

Index No.

-against-

VILLAGE DOCK, INC.,  
Second Third-Party Defendant.

The following papers numbered 1 to \_\_\_ read on this motion, \_\_\_\_\_

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2, 3-6, 7-8, 9
	Answering Affidavit and Exhibits-----	10-11, 12, 13-14, 15, 16
	Answering Affidavit and Exhibits-----	17-18, 19, 20
	Replying Affidavit and Exhibits-----	21, 22-23, 24-25, 26
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR 3212 for an order dismissing plaintiffs' complaint against defendants' The Metropolitan Transportation Authority (MTA) and Triborough Bridge and Tunnel Authority (TBTA); motion pursuant to CPLR 3212 for an order granting plaintiff Jason Lawrence partial summary judgment against defendants Village Dock, Inc. and Luis Eduardo Mendoza on his Labor Law §200 and common law negligence causes of action; and motion pursuant to CPLR 3212 for an order granting plaintiffs David Charles, Darryl Douglas and Nancy Douglas' partial summary judgment on their Labor law §200 and common law causes of action, and cross-motion pursuant to CPLR 3212 for an order dismissing plaintiff Jason Lawrence's complaint, on the ground that he did not suffer a medically determined injury that prevented him from performing his usual and customary duties for 90 out of 180 days immediately following the accident, are consolidated herein for decision.

Plaintiffs commenced this personal injury action seeking damages for injuries allegedly sustained on August 12, 2009, as a result of a motor vehicle accident with a vehicle owned by defendant Village Dock, Inc. and operated by its employee, defendant

Luis Eduardo Mendoza.

The following facts are undisputed. TBTA entered into a contract with American Bridge, general contractor, to bomb proof the Throgs Neck bridge. Village Dock was the subcontractor. At the time of the accident, plaintiffs were passengers inside a mini-bus owned by their employer, American Bridge. American Bridge was responsible for transporting its workers to their designated locations to perform reinforcement work on the bridge's towers. American Bridge was part of a five-vehicle convoy the day of the accident. The bridge has three travel lanes in each direction and the convoy traveled in the far right lane to drop-off the workers. Prior to the accident, the convoy, including the American Bridge mini-bus, had been stopped for approximately two minutes when Mendoza attempted to break from the convoy and change lanes into the middle lane. James Smith was driving a tractor trailer down the southbound middle lane of the bridge. About halfway into the middle lane, Mendoza swerved back into the convoy lane and the Village Dock vehicle collided with the American Bridge mini-bus, carrying the plaintiffs.

Plaintiffs Lawrence, Charles and Douglas' motion for summary judgment on the issue of liability on their common law negligence claims against defendants Village Dock and Mendoza, is granted. Movants correctly argue the fact that Mendoza pled guilty to making an unsafe lane change, in violation of Vehicle and Traffic Law §1128(a), establishes their prima facie showing of entitlement to summary judgment on the issue of liability. Village Dock and Mendoza have failed to raise a triable issue of

fact as to comparative negligence on the part of the plaintiffs. It is noted that any question as to apportionment of liability with the defendants is a question of fact for the factfinders.

Plaintiff Lawrence opposes American Bridge's motion for summary judgment on the grounds that issues of fact exist as to the Labor law §§ 200 and 241(6) claims. Specifically, Lawrence argues that American Bridge violated the dictates of Industrial Code §23-1.9 and the requirements of the Manual of Uniform Traffic Control Devices (MUTCD) for closing lanes as the area should have been barricaded and subject to the control of a flagman. However, the testimony that there were no lane closures at the time of the accident has not been challenged with admissible evidence. Therefore, American Bridge met its burden to establish Industrial Code §23-1.9 does not apply.

Further, it is undisputed that plaintiffs testified that they were only given directions from their supervisors or foremen, and that neither the MTA or the TBTA gave them any directions related to their jobs. Based on the record before this court, the convoy was not engaged in construction work at the time of the accident; and therefore, the Labor Law claims must be dismissed. Accordingly, the motion pursuant to CPLR 3212 for an order dismissing plaintiffs' complaint against the MTA and TBTA defendants, is granted.


The branch of the motion for an order granting plaintiff Lawrence partial summary judgment on his 90/180 claim, is denied. Movant has failed to allege exactly his usual and customary activities that he was unable to perform subsequent to the

accident. Doctors affirmations, including language such as "Mr. Lawrence remains temporarily and painfully disabled," without explaining what usual and customary duties he was medically unable to perform within the prescribed time, is insufficient. Therefore, the cross-motion pursuant to CPLR 3212 for an order dismissing plaintiff Lawrence 90/180 claim, is granted.

Accordingly, the Clerk is directed to: 1) dismiss the (main) action against defendants The Metropolitan Transportation Authority and Triborough Bridge and Tunnel Authority; 2) dismiss the third-party action; and 3) dismiss the second third-party action, and amend the caption to reflect such dismissals.

The foregoing shall constitute the decision and order of this court.

Dated: DEC 11 2020

  
\_\_\_\_\_  
J.S.C.

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- Motion is granted in part and denied in part
  - Action is still active