

Imbesi v New York City Tr. Auth.
2021 NY Slip Op 30744(U)
March 10, 2021
Supreme Court, New York County
Docket Number: 450433/2019
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

-----X

VINCENT IMBESI,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY,
ACCESS-A-RIDE, MAGGIE'S PARATRANSIT CORP,

Defendant.

-----X

MAGGIE'S PARATRANSIT CORP

Plaintiff,

-against-

JAMES HAMILTON, PV HOLDING CORP., ELSA MUZZOLINI,
HERTZ VEHICLES, LLC

Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 146, 148, 149, 159

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is ordered that the motion for summary judgment of third-party defendant James Hamilton ("Hamilton") is granted. This personal injury action arises out of a multi-motor vehicle incident that occurred on August 28, 2016, on the southbound FDR Drive near West 4th Street in Manhattan. Plaintiff alleges that he was a passenger in defendants/third-party plaintiffs' vehicle (the "Paratransit Vehicle"), which was struck by a second vehicle. Hamilton alleges that his vehicle did not strike the Paratransit Vehicle, but rather was struck by the vehicle driven by third-party defendant Elsa Muzzolini (the "Hertz

Vehicle”), after the Hertz Vehicle first struck the Paratransit Vehicle. Hamilton now moves pursuant to CPLR 3212 for summary judgment dismissing the third-party complaint and all cross-claims as against him, on the grounds that he was not negligent and was not the proximate cause of plaintiff’s accident. Defendants/third-party plaintiffs oppose the 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)). Hamilton proffers, *inter alia*, his own and plaintiff’s deposition testimony, as well as his sworn affidavit and a statement against interest made by the Paratransit Vehicle driver, to establish that the Paratransit Vehicle was hit by the Hertz Vehicle while both were on the FDR off-ramp at Houston Street, and that his own vehicle remained in the right lane of the FDR at all times until being struck by the Hertz Vehicle as it rebounded from its contact with the Paratransit Vehicle. (Affirmation in Support, ¶¶ 37-39, 43, 44, 49, 51-53, 56, 60-63; Exhibits M, N, O, P, Q)

Hamilton has made a *prima facie* showing of entitlement to judgment as a matter of law, having tendered sufficient evidence to demonstrate the absence of any material issues of fact as to the absence of his liability as the proximate cause of plaintiff’s alleged injuries. *See Alvarez*, 68 N.Y.2d at 324. The burden now 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 N.Y.2d 557, 560 (1980). *See also Winegrad*, 64 N.Y.2d at 853. Defendants/third-party plaintiffs oppose the motion, yet fail to raise any triable issues of fact sufficient to defeat it. Their opposition cites to plaintiff’s testimony that “an SUV” hit the Paratransit Vehicle, and the Police Accident Report

(Affirmation in Support, Exhibit L) which purports to describe Hamilton's vehicle as "Vehicle #1," which attempted to exit the FDR and hit the Paratransit Vehicle, described as "Vehicle #3." However, plaintiff also testified that there were two SUVs involved in the incident and he did not see the one that came into contact with the Paratransit Vehicle. (Affirmation in Support, Exhibit N, p. 19; Exhibit O, p. 73) Moreover, the uncertified Police Accident Report – apart from noting that the driver of Vehicle #1 "states that she [sic] was attempting to exit the highway when Vehicle #3 sped up," while describing the actions of Vehicle #2's driver as consistent with Hamilton's testimony, which suggests an inadvertent reversal of the identities of the vehicle drivers – is not "admissible evidence" and must be disregarded. *Coleman v. Maclas*, 61 A.D.3d 359 (1st Dep't 2009).

Accordingly, it is hereby

ORDERED that Hamilton's motion for summary judgment dismissing the third-party complaint herein is granted and the third-party complaint and all cross-claims and counterclaims are dismissed in their entirety as against Hamilton, with costs and disbursements to Hamilton as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of Hamilton; and it is further

ORDERED that the action is severed and continued against the remaining third-party defendant; 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

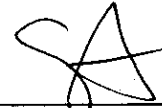
ORDERED that counsel for Hamilton shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption 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 at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

3/10/2021

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