

James v New York City Tr. Auth.
2021 NY Slip Op 31147(U)
April 1, 2021
Supreme Court, New York County
Docket Number: 154554/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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SHAQUASHA SALEKA JAMES, AS ADMINISTRATOR OF THE ESTATE OF TASHA DENISE WILLIAMS, DECEASED,

Plaintiff,

INDEX NO. 154554/2018

MOTION DATE N/A

MOTION SEQ. NO. 004

- v -

NEW YORK CITY TRANSIT AUTHORITY, ALL TRANSIT, LLC, BYHEEM BROWN

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after oral arguments, it is ordered that defendant New York City Transit Authority's (hereinafter referred to as "defendant NYCTA") motion for summary judgment is denied for the reason set forth below.

In this personal injury action arising out of a motor vehicle accident, defendant NYCTA moves for summary judgment dismissing the complaint against it, arguing that the vehicle in question was owned by it but rented to defendant All Transit, LLC such that it is not vicariously liable for the instant motor vehicle accident pursuant to the Graves Amendment (49 USC §30106). It is well settled that the Graves Amendment bars state statutory and common law vicarious liability actions against owners of motor vehicles who are in the business of renting or leasing motor vehicles for the negligence of the drivers.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented. See Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 (1957). "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). “In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility.” *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep’t 1990). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Here, defendant NYCTA argues that the vehicle involved in the instant motor vehicle accident was owned by it and rented to co-defendant All Transit, LLC at the time of the accident. Defendant NYCTA further argues that the driver of such vehicle was not its employee, nor was defendant NYCTA responsible for the maintenance of the vehicle. In support, defendant NYCTA proffered the lease for the subject vehicle to co-defendant All Transit, LLC. According to defendant NYCTA, co-defendant Byheem Brown was driving such vehicle at the time of the accident and was acting within the scope of his employment with co-defendant All Transit, LLC to provide Access-A-Ride service to customers.

Plaintiff opposes the instant motion arguing that it is defendant NYCTA’s second motion for summary judgment such that it must be denied. Plaintiff further argues that defendant NYCTA is not in the business of renting or leasing motor vehicles, and, thus, the Graves

Amendment does not apply here. Plaintiff contends that issues of fact exist as to whether defendant NYCTA manage the Access-A-Ride program. Defendant NYCTA replies.

Preliminarily, the Court notes that defendant NYCTA previously cross-moved in a prior motion sequence number seeking summary judgment with regards to plaintiff's negligent hiring claim. The Appellate Division, First Department, has held that "[m]ultiple summary judgment motions should be discouraged in the absence of newly discovered evidence or sufficient cause." *National Enterprises Corp. v Dechert Price & Rhoads*, 246 AD2d 481, 482 (1st Dep't 1998). See also *Smith v Metropolitan Transportation Authority*, 226 AD2d 168, 168 (1st Dept' 1996); *Forte v Weiner*, 214 AD2d 397, 398 (1st Dep't 1995); *Kobre v United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc.*, 32 AD3d 218, 222 (1st Dep't 2006). Here, following defendant NYCTA's cross-motion for summary judgment, the complaint was amended and defendant NYCTA timely filed an answer which asserted the Graves Amendment as a defense for the first time. Here, the amended complaint serves as the pleadings of this action; superseding the original complaint. As such, the instant motion for summary judgment is defendant NYCTA's first motion for summary judgment with regards to the pleadings now before the Court. Thus, plaintiff's argument, that the instant motion must be denied as it is defendant NYCTA's second motion for summary judgment, fails.

As to plaintiff's argument that defendant NYCTA is not in the business of renting motor vehicles, the Court finds that an issue of fact exists as to whether defendant NYCTA is in the business of renting vehicles and whether defendant NYCTA is involved in the Access-A-Ride program. While it is undisputed that defendant NYCTA rented the vehicle in question to co-defendant All Transit, LLC at the time of the accident for use as an Access-A-Ride vehicle, taking the facts in a light most favorable to plaintiff, issues of fact exist as to whether defendant

NYCTA managed, controlled, or administered the Access-A-Ride program. In fact, the Metropolitan Transportation Authority's own website states, in the Providers section, that "[p]rivate carriers under contract to NYC Transit provide [Access-A-Ride] service by lift-equipped vans, ramp-equipped vehicles, or sedans." web.mta.info/nyct/paratran/guide.htm/ Such website goes on to state, in the Applying or Recertifying for Paratransit Service section, that to qualify for Access-A-Ride service, applicants must go to an assessment center. "Following your visit to the center, an assessment report will be sent to NYC Transit *Eligibility* staff." *Id.*

Moreover, in the Access-A-Ride (AAR) MetroCard section, the website states that "[t]he AAR MetroCard issued by NYC Transit serves as both your Paratransit customer identification card to use when you ride AAR and as a MetroCard if you opt to use public transit." *Id.* The website further states, in the Taxi/Car Service Authorization and Reimbursement section, that "NYC Transit may offer customers a conditional authorization when it is unclear if the same-day problem was caused by you or NYC Transit. You will not be reimbursed for taxi/car service if NYC Transit determines that you are responsible for the problem." *Id.* Defendant NYCTA is mentioned numerous other times throughout the website which makes clear that defendant NYCTA is involved in the Access-A-Ride program. Thus, despite defendant NYCTA's statements to the contrary, genuine issues of triable facts exist as to whether defendant NYCTA administers, manages, or controls part of the Access-A-Ride program. As triable issues of fact exist, defendant New York City Transit Authority's motion for summary judgment is denied.

Accordingly, it is

ORDERED that defendant New York City Transit Authority's motion for summary judgment to dismiss this action as against it is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



4/1/2021
DATE

HON. ADAM SILVERA, 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