Maharaj v Lopez
2022 NY Slip Op 34647(U)
June 30, 2022
Supreme Court, Bronx County
Docket Number: Index No. 30064/2018E
Judge: Veronica G. Hummel

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31

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GYANWATTIE MAHARAJ,

Plaintiff

-against -

JEMARY LOPEZ, MARIA LOPEZ, MAKSUDJON DAVRONOV, PALSI CORP. and METROPOLITAN TRANSIT AUTHORITY,

Defendants.

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Index No. 30064/2018E
DECISION/ORDER

Motion Seq. 1

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in regard to the motion by plaintiff GYANWATTIE MAHARAJ [Mot. Seq. 1], made pursuant to CPLR 3212, that seeks an order granting plaintiff "summary judgment on the issue of liability" against defendants JEMARY LOPEZ, MARIA LOPEZ, MAKSUDJON DAVRONOV, PALSI CORP., and METROPOLITAN TRANSIT AUTHORITY (MTA); and the cross-motion of defendant MTA, made pursuant to CPLR 3212, CPLR 3211(a) and VTL 388, granting said defendant summary judgment dismissing the complaint and all cross-claims against it.

The undisputed facts are as follows: This is a personal-injury action arising out of a two-vehicle accident that occurred on September 13, 2017, at or around 5:30 p.m. at the intersection of Laconia Avenue and East 217th Street, Bronx County. Defendant Maria Lopez was the owner of a vehicle that was being operated by defendant Jemary Lopez (the Lopez vehicle). Defendant Palsi own another vehicle which was being operated by defendant Davronov (the Palsi vehicle). The Palsi vehicle was a Taxi and Limousine Commissioned vehicle and part of the Access-a-Ride program. Defendant MTA denies controlling, owning, or maintaining the Palsi vehicle. Plaintiff was a passenger in the Palsi vehicle when it had a collision with the Lopez vehicle.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material

issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dep't 2020). A plaintiff is not required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

In support of the motion, plaintiff submits an attorney affirmation, a personal affidavit, a memorandum of law, copies of the pleadings, and an uncertified copy of the police report..

In opposition to the motion, the Palsi defendants submit an attorney affirmation, an affidavit from the defendant driver, and a statement of material facts. The Lopez defendants submit an affidavit adopting the arguments made by the Palis defendants and a statement of material facts. Defendant MTA cross-moves for dismissal of the action against it on the grounds, in sum and substance, it does not control, manage or have a legal connection to the Palis vehicle.

Plaintiff's motion

In the affidavit, plaintiff avers that the Accident involved the defendants' two cars and that plaintiff was a passenger in the Palsi vehicle. Plaintiff provides no further details regarding the Accident. Defendants do not dispute these facts.

Plaintiff's motion seeking partial summary judgment against defendants based on plaintiff's own lack of fault for the Accident is granted. Of note, there is a significant distinction between granting a plaintiff summary judgment on plaintiff's lack of culpable conduct on liability and granting a plaintiff summary judgment on defendants' negligence. *Oluwatayo v. Dulinayan*, 142 A.D.3d 113 (1st Dep't 2016). A grant of partial summary judgment against a defendant on liability in a negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury. *Id.; Ortega .v Liberty Holdings, LLC*, 111 A.D.3d 904, 905-906 (2d Dep't 2013). In contrast, a grant of partial summary judgment on the issue of the plaintiff's lack of

fault or culpability is a much narrower finding. Such a finding merely establishes as a matter of law that the plaintiff is free of any negligence, as would be the case of an innocent passenger. *Campbell v. Mincello,* 184 A.D.3d 412 (1st Dep't 2020). The First Department pronouncement in *Garcia v Tri County Ambulette Serv., supra* (282 A.D.2d 206 (1st Dep't 2001))stands for the proposition that in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination that plaintiff had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver's negligence. *Oluwatayo v Dulinayan, supra*.

Here, as it is undisputed that plaintiff was a passenger in the Palsi vehicle and there is no claim that plaintiff contributed to causing the accident, the motion by plaintiff seeking partial summary judgment on liability is granted to the extent that plaintiff, as an innocent passenger, is found free from culpable conduct for the happening of the Accident, regardless of the issue of the defendants' alleged individual negligence. *Campbell v. Mincello, supra; Oluwatayo v. Dulinayan, supra*. Likewise, any affirmative defenses based on culpable conduct and comparative negligence alleged against plaintiff are dismissed. *Oluwatayo v Dulinayan, supra; Prudente v. Mcbride*, 2020 WL 7091334 [Sup. Ct. New York County 2020]. "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" *Garcia v. Tri County Ambulette Serv., supra.*

Of note, the attorney affirmation submitted in opposition to the motion has no evidentiary value. *see Conti v. City of Niagara Falls Water Bd.*, 82 A.D.3d 1633, 1634 (1st Dep't 2011) ("It is well established . . . that an affirmation submitted by an attorney who has no personal knowledge of the facts is without evidentiary value."), and is thus insufficient to defeat the motion. Further, the contention by defendants that plaintiff's motion is premature also lacks merit as the mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion. *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep't 2016); *Thompson v. Pizzaro*, 155 A.D.3d 423 (1st Dep't 2017); *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep't 2016).

Defendant MTA's cross-motion to dismiss

In the complaint, plaintiff alleges that defendant MTA owned, operated, maintained, managed, controlled, and supervised the Palsi vehicle. Based on these allegations, plaintiff claims that the MTA is an owner under VTL 388 and liable for the alleged injuries under the VTL's provisions. Defendant MTA now moves of an order pursuant to CPLR 3212 for summary judgment dismissing the complaint against it under VTL 388 since it did not own, operate, maintain, manage or control the Palsi vehicle (an Access–A–Ride van) in which plaintiff was a passenger.

Section 388(1) of the VTL states, "every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner" (VTL 388; see *Elrac v. Ward*, 96 NY2d 58 [2003]). VTL 128 defines an "Owner" as:

> *A person, other than a lien holder, having the property in or title to a vehicle or vessel. The term includes a person entitled to the use and possession of a vehicle or vessel subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle or vessel having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.*

In support of the cross-motion, defendant MTA submits an attorney affirmation, a statement of material facts, a certified copy of the Department of Motor vehicles title record for the Palsi vehicle, an affidavit from corporate officer Ronald Roberts, and copies of motion papers. Defendant also submits a reply affirmation. In opposition, plaintiff submits an attorney affirmation, statement of material facts, and a copy of the notice of claim.

Roberts avers that he is a Principal Administrative Associate at the MTA and as such, he is fully familiar with the facts recited therein. He has worked with MTA since December 2010 and his responsibilities include, but are not limited to, claim processing and document review related to General Municipal Law § 50-e. After conducting a diligent and comprehensive search of the MTA records in connection with the above-captioned matter, Robert's search revealed that, on the date of the Accident, defendant MTA was not the registered or titled owner of the Palsi Vehicle. Additionally, the Palsi vehicle was not operated or dispatched by defendant MTA and Palsi was not contracted, retained by, nor provided transportation services for MTA. Further, the defendant driver of the Palis vehicle was never an agent, employee or servant with authorization or

permission from MTA to drive the vehicle. MTA's sole involvement with the Access-A-Ride Program is contracting with facilities that provide their own cars and drivers licensed by the New York City Taxi and Limousine Commission who agree to take rides at set rates. Defendant MTA never controlled, owned, operated, managed, maintained, repaired or serviced the vehicles involved with the Access-A-Ride Program. Specifically, on the date of the Accident, defendant MTA did not control, own, operate, manage, maintain, repair or service the subject motor vehicle. The submitted certified certificate of title shows that the Palsi Vehicle was owned by Palsi Corp.

Based on these submissions, movant established its *prima facie* entitlement to summary judgment by demonstrating that defendant MTA did not own or operate the Access–A–Ride van in which plaintiff was a passenger and that it was not involved with the subject accident. *Waluyn v New York City Transit Authority*, 58 Misc. 3d 1206(A) (Sup. Ct. Kings County 2017); *see Farrulla v. Happy Care Ambulette Inc*., 125 A.D.3d 11, 12 (1st Dep't 2015); *McHale v. Anthony*, 70 A.D.3d 463, 465 (1st Dept 2010) [summary judgment granted in defendant's favor where "there is no evidence that it either owned, leased or operated the offending truck, and the equities do not justify keeping it in the case"]; *Woods v. Craig*, 41 A.D.3d 1260,1260 (4th Dep't 2007).

Plaintiff, in turn, fails to raise an issue of material fact. The attorney affirmation submitted in opposition to the motion has no evidentiary value. *see Conti v. City of Niagara Falls Water Bd.*, 82 A.D.3d 1633, 1634 (1st Dep't 2011) ("It is well established . . . that an affirmation submitted by an attorney who has no personal knowledge of the facts is without evidentiary value."), and is thus insufficient to defeat the motion. Any contention that the motion is premature also lacks merit as the mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion. *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep't 2016).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of the motion of plaintiff BYANWATTIE MAHARAJ (Mot. Seq. 1) seeking an order, pursuant to CPLR 3212, granting plaintiff partial "summary judgment as to liability" against defendants JEMARY LOPEZ, MARIA LOPEZ, MAKSUDJON DAVRONOV, and PALSI CORP. is granted and the affirmative defenses based on comparable

negligence are stricken; and it is further

ORDERED that the part of the motion of plaintiff (Mot. Seq. 1) that seeks an order, pursuant to CPLR 3212, granting plaintiff partial summary judgment against defendant MTA is denied as moot; and it is further

ORDERED that the cross-motion of defendant MTA, made pursuant to CPLR 3212, 3211 (a) and VTL 388, for an order dismissing the complaint and all cross-claims against it is granted; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims against defendant MTA; and it is further

ORDERED that the caption shall henceforth be amended to read as follows:

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GYANWATTIE MAHARAJ

Plaintiffs

-against -

JEMARY LOPEZ, MARIA LOPEZ, MAKSUDJON DAVRONOV, and PALSI CORP,

Defendants.

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;and it is further

ORDERED that the Clerk shall mark the motion [Mot. Seq. 1] disposed in all Court records.

This constitutes the decision and order of the Court.

Dated: June 30, 2022 **Hon.** _____
VERONICA G. HUMMEL, A.J.S.C.

1.	CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY		☒ CASE STILL ACTIVE	
2.	MOTION IS.....	x GRANTED	☐ DENIED	GRANTED IN PART	☐ OTHER
3.	CROSS-MOTION IS.....	X GRANTED	☐ DENIED	☐ GRANTED IN PART	☐ OTHER

4.	CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE
		☐ FIDUCIARY APPOINTMENT		☐ REFEREE APPOINTMENT
		☐ CONVERT TO ELECTRONIC FILING		