

Moody v New York City Tr. Auth.
2022 NY Slip Op 35092(U)
May 25, 2022
Supreme Court, Bronx County
Docket Number: Index No. 32325/2019E
Judge: Bianka Perez
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

-----X
ZANANDA MOODY,

Index No. 32325/2019E

Plaintiff,

-against-

Hon. Bianka Perez

Justice Supreme Court

NEW YORK CITY TRANSIT AUTHORITY, et.
als.,

Defendants.

-----X
The following documents were read on this motion (**Seq No. 002**) submitted on **February 16, 2022**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	Nyscef No(s). 34-51
Cross-Motion Answering Affidavit and Exhibits	Nyscef No(s). 54-70, 72-76
Reply Affidavit and Exhibits	Nyscef No(s). 78-80

Upon the foregoing papers, plaintiff moves for summary judgment on liability against defendants New York City Transit Authority (NYCTA), Metropolitan Transportation Authority (MTA), Access-A-Ride and Columbus Transit LLC, and defendants, NYCTA, MTA and Access-A-Ride cross-move to dismiss. Defendants oppose the motion and plaintiff opposes the cross-motion.

In this motor vehicle action, the complaint alleges that on the day of the accident, September 24, 2018, plaintiff was a wheelchair bound passenger inside an Access-A-Ride van owned by defendant NYCTA, operated by Adam Thomason employed by defendant Columbus Transit LLC. Mr. Thomason while on Willis Avenue and 141st Street bought the van to a stop causing plaintiff's wheelchair to be thrown forward due to his failure to properly secure the wheelchair (See Exhibit J, NYSCEF Doc#. 47). Defendant Columbus Transit LLC concedes liability. Plaintiff seeks summary judgment on liability against all the defendants as it is alleged there's no issue of fact as to liability.

Defendants MTA and Access-a-Ride also seek summary judgment on the grounds that they do not own, maintain, manage, control or repair the subject vehicle.

Defendant NYCTA seeks summary judgment pursuant to the Graves Amendment (49 U.S.C. § 30106).

In support of plaintiff's motion, she annexes the pleadings, 50h transcript, deposition transcripts, incident reports, and photos (see Exhibits A-J, NYSCEF Doc.# 38-47). The defendant Columbus Transit LLC concedes the issue of liability, (see Exh. C, NYSCEF Doc#59).

Defendant NYCTA opposes plaintiff's motion and cross-moves to dismiss pursuant to CPLR 3212 alleging as a lessor they're not liable for the actions of their lessee under the Federal Transportation Equity Act of 2005, 49 U.S.C. § 30106, commonly known as the "Graves Amendment," a leasing/rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter, its employees, or agents. Robin R. Cooper attests in her Affidavit, that the New York City Transit Authority leased the vehicle bearing NY plate 31727LV to defendant Columbus Transit LLC, (see Exh. D, NYSCEF Doc#60).

MTA also opposes and cross-moves to dismiss pursuant to CPLR 3212 and VTL § 388, the MTA submits their Verified Answer and the sworn affidavit of Robin R. Cooper, Assistant Director of Risks and Insurance Management Department. In her affidavit, Robin R. Cooper avers that a search of the files and records of the MTA revealed that the MTA was neither the registered nor titled owner of the vehicle involved in this incident. Robin R. Cooper further avers that the MTA does not control, own, operate, manage, maintain, repair or service the vehicles involved with the Access-A-Ride program. Robin Cooper finally affirms that on September 24, 2018, the MTA did not operate, maintain or control the subject vehicle and that the operator of said vehicle, was not an employee, agent or servant of the MTA (see Exh. D, NYSCEF Doc#60).

Access-a-Ride also opposes and cross-moves to dismiss as they allege, they are an improper party. Ms. Cooper attests that Access-A-Ride is merely the name of the Paratransit Program of the NYCTA and it is not a legal entity (see Exh. D, NYSCEF Doc#60). Thus, as it is merely the name of a program and does not operate, maintain or control the subject vehicle or employ the operator of said vehicle it cannot be liable to the Plaintiff.

Plaintiff opposes defendants cross-motion as they allege there exists questions of fact as to NYCTA's control over the subject vehicle. Specifically, the bus operator Adam Thomason testified that NYCTA employees would visit the bus depot on a weekly basis and inspect the paratransit vehicles (see Exh. G, NYSCEF Doc#44).

Vehicle and Traffic Law §388, states, in pertinent part, that [e]very 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, including any person entitled to the use and possession of a vehicle subject to a security interest in another person and includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

The Graves Amendment, regarding rented or leased motor vehicle safety and responsibility, bars vicarious liability actions against professional lessors and renters of vehicles, as would otherwise be permitted under Vehicle and Traffic Law § 388 (*Gluck v Nebgen*, 72 AD3d 1023, 898 N.Y.S.2d 881 [2d Dept. 2010,]; *Graham v Dunk'ley*, 50 AD3d 55, 852 N.Y.S.2d 169 [2d Dept. 2008]; *Hernandez v. Sanchez*, 40 AD3d 446, 836 N.Y.S.2d 577 [1st Dept. 2007]).

The Transportation Equity Act of 2005 (49 USC § 30106) provides in pertinent part: § 30106 Rented or leased motor vehicle safety and responsibility.

“(a) In general.--An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if:

“(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

“(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)”

However, the courts have held in this regard that although the Graves Amendment bars negligence claims against car-rental companies based solely on a theory of vicarious liability (*Graham v Dunkley*, *supra*; *Hernandez v Sanchez*, *supra*.), a claim based upon negligent maintenance is not barred by the Graves Amendment since the statute does not absolve leasing companies of their own negligence (*Collazo v MTA-New York City Tr.*, 74 AD3d 642, 905 N.Y.S.2d 30 [1st Dept. 2010]; *Novovic v Greyhound Lines, Inc.*, 2008 U.S. Dist LEXIS 94176 [ED NY 2008]).

The Court finds that the MTA established their *prima facie* entitlement to summary judgment by demonstrating that they did not own, operate, control, maintain, or otherwise manage

the van in which plaintiff was a passenger and that they had no involvement with the subject accident (see *Farrulla v. Happy care Ambulette Inc.*, 125 A.D.3d 11, 12 [1st Dept 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 AD3d 1260, 1260 [4th Dept 2007] ["Defendants ... established their entitlement to judgment as a matter of law ... by establishing that ... [defendant] was not the owner or the operator of the vehicle that caused the accident"]). In addition, plaintiff has presented no evidence of a connection between a supposed entity named "Access-A-Ride," and has not even presented evidence that such an entity exists. Thus, plaintiff's motion is denied as to the defendant MTA and Access-a-Ride and defendants MTA and Access-a-Ride's cross-motion to dismiss is granted.

Plaintiff's motion as to defendant, Columbus Transit LLC is granted as they have conceded liability. The Court finds the remaining arguments in opposition unavailing.

Plaintiff's motion for summary judgment as to defendant NYCTA is denied and defendant NYCTA's cross motion is granted as the Lease Agreement between defendant New York City Transit and defendant Columbus Transit LLC states: "The Contractor shall maintain the vehicles in 'Service Ready' condition at all times. Service Ready shall mean the Vehicle is clean, mechanically safe and reliable, and that all accessories are operable." (see Exh. E, NYSCEF Doc 61, see also Ms. Coopers' affidavit Exh. D, NYSCEF Doc#.60). Notwithstanding the fact that Mr. Thomason testified that the NYCTA employees would visit the bus depot on a weekly basis and inspect the paratransit vehicles, there's nothing in this record to substantiate his testimony. In addition, it is clear pursuant to the terms of the agreement the NYCTA did not have a duty to maintain the subject vehicle. Thus, plaintiff's motion is denied, and defendants NYCTA's cross-motion is granted.

In addition, plaintiff established her prima facie burden that as a passenger, she did not engage in any culpable conduct which contributed to the occurring of the accident (*see Medina v Rodriguez*, 92 AD3d 850, 850 [2d Dept 2012]; CPLR 3212[g]). Thus, the affirmative defense of comparative negligence is dismissed.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment as to liability against Columbus Transit LLC is granted, it is further

ORDERED, that plaintiff's motion dismissing the affirmative defense of comparative negligence is granted, it is further

ORDERED, that the remaining branches of plaintiff's motion are denied, it is further

ORDERED, that NYCTA cross-motion to dismiss is granted, and it is further

ORDERED, that defendant's MTA and Access-a-Ride's cross-motion to dismiss is granted, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment against plaintiff dismissing the complaint as against defendants, New York City Transit Authority, Metropolitan Transportation Authority and Access-A-Ride ONLY.

This constitutes the decision and order of the Court.

Dated: May 25, 2022

Hon. 
BIONKA PEREZ, J.S.C.

1. CHECK
ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL
ACTIVE

2. MOTION
IS.....

☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐
OTHER

3. CHECK IF
APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE
APPEARANCE

☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT