

Campbell v City of New York

2023 NY Slip Op 30927(U)

March 27, 2023

Supreme Court, New York County

Docket Number: Index No. 157187/2019

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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JOAN MARIE CAMPBELL,
Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSPORTATION
AUTHORITY, ACCESS-A-RIDE, DALE MANAGEMENT
CORP., MV TRANSPORTATION INC., MTA/NEW YORK
CITY TRANSIT-PARATRANSIT, MARTIN FRIEDMAN,
MICHAEL J. SABIO,

Defendants.

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DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31,
32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion by defendants Metropolitan Transit Authority
("MTA"), and New York City Transit Authority ("NYCTA"), and Access-A-Ride (collectively,
the "Transit Defendants") for summary judgment dismissing this action as against them is denied
for the reasons set forth below.

In this negligence action, plaintiff seeks damages for personal injuries sustained in a motor
vehicle accident on August 7, 2018, when the car in which she was a passenger rear-ended another
vehicle (See NYSCEF Doc. No. 30 [Complaint]). Plaintiff alleges the car in which she was riding
was an Access-A-Ride vehicle, with ID number 678391, and was owned, maintained, and
controlled by the Transit Defendants (Id.; see also NYSCEF Doc. No. 31 [Notice of Claim at ¶3]).

The Transit Defendants now move for summary judgment, arguing that pursuant to VTL
§388, liability for injuries resulting from an automobile accident only attaches to the owner or

operator of the automobile, and that the Transit Defendants are neither. In support of their argument, the Transit Defendants submit the affidavit of Ronald Roberts, a Principal Administrative Associate of NYCTA in which he attests, in pertinent part, that

As alleged in plaintiff's complaint, ID # 678391 is an Access-A-Ride ID number, not a motor vehicle ID number. Access-A-Ride is merely a program that is administered by the NYCTA.

I conducted a diligent and comprehensive search of the NYCTA and MTA records in connection with the above-captioned matter. My search revealed that on August 7, 2018, the Defendants NYCTA and MTA did not own the motor vehicle that was dispatched for Access-A-Ride to pick up the plaintiff Joan Marie Campbell bearing Access-A-Ride ID number 678391.

Accordingly, on August 7, 2018, Defendants NYCTA and MTA did not control, own, manage, operate, or maintain the subject motor vehicle that was dispatched for Access-A-Ride ID number 678391 ... and this action should be dismissed against NYCTA and MTA.

(NYSCEF Doc. No. 33 [Roberts Aff. at ¶¶5-7] [emphasis added]).

In opposition, plaintiff argues that summary judgment is premature because Roberts has not been deposed and, as a result, there remains material issues of fact as to whether defendants were owners of the automobile and potentially liable to plaintiff under VTL §388.

DISCUSSION

“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. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

The Transit Defendants have not met their burden here. Even crediting the Roberts affidavit, the fact that the Transit Defendants did not own the vehicle in question does not establish that the Transit Defendants do not bear any liability for the management, operation, or maintenance of the subject automobile (See Staples v New York City Tr. Auth. 2020 WL 4391650 [Sup Ct, Bronx County 2020]; Wilson v New York City Tr. Auth., 2022 NY Slip Op. 30275[U], 8-9 [Sup Ct, NY County 2022]). Rather, “given that [Roberts’ affirmation] admits that [NYCTA] administer[s] the Access-A-Ride program, this court agrees with plaintiff that there exist issues of material fact as to whether NYCTA had control or any other relationship over the vehicle involved in this incident” (Huggins v New York City Tr. Auth., 2021 WL 3172224 [Sup Ct, NY County 2021]). Finally, even if plaintiff’s evidence was insufficient to raise triable issues of fact the Court would still deny the Transit Defendants’ motion as premature, per CPLR §3212(f), given the preliminary state of discovery in this action (See Staples v New York City Tr. Auth. 2020 WL 4391650 [Sup Ct, Bronx County 2020]).

Accordingly, it is

ORDERED that Metropolitan Transit Authority, the New York City Transit Authority and Access-A-Ride’s motion for summary judgment is denied, without prejudice; and it is further

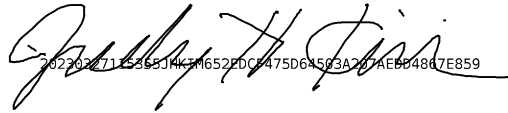
ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon defendants within fifteen days of the date of this decision and order; and it is further

ORDERED that counsel for plaintiff 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); 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.



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3/27/2023

DATE

HON. JUDY H. KIM, 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