

Comas v City of New York

2023 NY Slip Op 31102(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 161435/2021

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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ANTHONY COMAS,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTION, ROBIN KUINLAN,
FIRST TRANSIT INC., FIRST TRANSPORTATION LLC,
AMERICAN UNITED TRANSPORTATION INC., EZ LIVERY
LEASING, LLC, JOSE HECTOR SORIANO-DURAN,

Defendants.

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INDEX NO. 161435/2021
MOTION DATE 01/03/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion by defendants First Transit, Inc. and Robin Kuinlan for summary judgment dismissing this action as against them is denied.

On December 21, 2021, plaintiff commenced this action by the filing of a summons and complaint alleging that on January 5, 2021, he sustained injuries when an automobile owned by defendants First Transportation LLC, First Transit, Inc., and the New York City Department of Correction ("DOC") and operated by defendant Robin Kuinlan, in which plaintiff was a passenger, collided with a vehicle owned by EZ Livery Leasing, LLC and American United Transportation Inc. and operated by defendant Jose Hector Soriano-Duran near the intersection of West 155th Street and Macombs Place in New York County (NYSCEF Doc. No. 28 [Compl. at ¶¶33, 104-107]).

Defendants Robin Kuinlan and First Transit, Inc. now move for summary judgment. In support of their motion, they submit the affidavit of Adam R. Moore attesting that:

On January 5, 2021, the date of the subject accident, I was the general manager of operations pursuant to contract with New York State Department of Corrections and Community Supervision (DOCCS). In that position, I was familiar with the terms of the contract, and with the operations conducted under the contract. A true and accurate copy of the contract between First Transit and DOCCS accompanies this affidavit and is incorporated herein.

On January 5, 2021, First Transit, Inc. was the owner of the 2013 Americana bus, New York plate 25141BB, that was involved in the accident. This vehicle, a mini-coach, was among the vehicles leased by ... DOCCS pursuant to the contract.

Mini-coach services are described in Article 3.12 of the contract (see p. 46 of the pdf file). Mini-coaches, which are capable of carrying twenty passengers, were provided to listed correctional facilities to effectuate interfacility transportation of inmates. The drivers were provided by the facilities. DOCCS made the mini-coaches available for servicing in accordance with First Transit's maintenance schedule, but DOCCS otherwise had exclusive custody of the mini-coaches. DOCCS parked and stored the mini-coaches on the grounds of its facilities.

The mini-coach involved in the January 5, 2021 accident was in the custody of DOCCS at the time of the accident and it was operated by DOCCS's driver.

(NYSCEF Doc. No. 30 [Moore Aff. at ¶¶3-6]). Movants also submit the referenced contract between First Transit and DOCCS (NYSCEF Doc. No. 31). First Transit maintains that these submissions establish that the vehicle in which plaintiff was a passenger was leased to, and exclusively used and operated by, DOC and that First Transit's maintenance of this vehicle played no role in the subject collision. First Transit argues that the foregoing establishes that it is exempt from liability under 49 USC §30106, also known as the Graves Amendment.

Movants also submit the affidavit of defendant Robin Kuinlan, attesting that:

I am a retired New York State Correction Officer.

...

On January 5, 2021, I was working as a Correction Officer in the employ of New York State Department of Corrections and Community Supervision (DOCCS). On

that date, Correction Officer Octavia Miller and I were assigned the duty of transporting certain inmates to the New York State prison facility at Edgecombe. The plaintiff Anthony Comas was, at that time, an inmate in custody of the New York State prison system. Comas was among the inmates we were transporting, in a mini bus that was leased by DOCCS from First Transit.

The accident occurred on 155th Street at the Manhattan end of the Macombs Dam bridge: A livery car struck the mini bus, in a minor contact. I was the driver of the mini bus. At the time of the accident, the mini bus was in good mechanical condition. The mini bus was under my control, and I had no issues or problems with the brakes, steering, or other systems of the vehicle.

(NYSCEF Doc. No. 32 [Kuinlan Aff. at ¶¶1-4]).

Finally, movants submit an “inmate report” generated through the DOC’s website which, according to movants, establishes that Anthony Comas was, at the time of the accident, an inmate in the custody of New York State’s Department of Corrections and Community Supervision (NYSCEF Doc. No. 29). Movants argue that the foregoing establishes that this action against Kuinlan is barred by Correction Law §24.

In opposition, plaintiff argues that the motion is premature because no depositions have been conducted, mandating denial pursuant to CPLR §3212(f). They further argue that First Transit has failed, as a matter of law, to establish a Graves Amendment defense, because questions of fact exist as to defendants’ negligent supervision and maintenance of the subject automobile¹. Defendants American United Transportation, Inc., EZ Livery Leasing, LLC, and Jose Hector Soriano-Duran also oppose the motion, adopting plaintiff’s arguments (NYSCEF Doc. No. 59 [Spata Affirm. in Opp.]).

DISCUSSION

First Transit’s motion for summary judgment is denied. First Transit argues that they are exempt from liability under the Graves Amendment (49 USC § 30106), which provides that:

¹ Plaintiff also asserts that a conflict of interest exists between the movants but does not elaborate on this claim.

An owner of a motor vehicle that rents or leases the vehicle to a person ... shall not be liable under the law of any State ... by reason of being the owner of the vehicle ... 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

(49 USC § 30106 [emphasis added]).

“Accordingly, in order to establish its prima facie entitlement to judgment as a matter of law in this action, [First Transit must] prove not only that it is in the business of leasing vehicles, but also, that it did not negligently maintain the [mini bus in question]” (Casine v Wesner, 165 AD3d 749, 750 [2d Dept 2018]). At this juncture, however, First Transit has failed to establish that it properly maintained the subject mini bus it leased to DOC. Moore’s conclusory assertion that this mini bus was properly maintained is not sufficient to “demonstrate that the accident was not caused by the condition of the vehicle as a consequence of [First Transit’s] allegedly negligent failure to maintain” (Olmann v Neil, 132 AD3d 744, 745-46 [2d Dept 2015]; Anglero v Hanif, 140 AD3d 905, 906-07 [2d Dept 2016; cf. Reifsnnyder v Penske Truck Leasing Corp., 140 AD3d 572, 573 [1st Dept 2016]). Neither is it appropriate to credit Kuinlan’s assertion that there were “no issues or problems with the brakes, steering, or other systems of the vehicle” before plaintiff has had an opportunity to cross examine Kuinlan as to this issue. Accordingly, First Transit’s motion for summary judgment is denied.

Kuinlan’s motion for summary judgment is also denied, as Kuinlan’s reliance on Correction Law §24 is misplaced. That statute provides, in relevant part, that:

Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

(Correction Law §24[2]).

While movants assert that their submissions establish that “Robin Kuinlan cannot be sued as an individual, and that the only proper party is the State of New York, in the Court of Claims” (NYSCEF Doc. NO. 34 [DiMartini Reply Affirm. at ¶8]), under binding appellate case law, a correction officer’s operation of an automobile, even when transporting prisoners, does not fall within this statute’s purview² (See Mark v Vasseur, 13 AD2d 927 [3d Dept 1995] [Correction Law §24 did not apply to defendants, DOC employees, sued for personal injuries sustained in a motor vehicle accident in which defendants were involved while transporting prisoners in a state-owned van] lv to appeal denied 85 NY2d 1032 [1995]).

The cases relied upon by Kuinlan do not support a contrary conclusion. In Ismail v Singh, 3 Misc 3d 188, 190-91 (Sup Ct, Kings County 2003), the court concluded that Correction Law §24 did not apply to a DOC employee defendant who was involved in an automobile collision while driving a state-owned vehicle from Sing-Sing to Queensboro Correctional Facility to deliver supplies. The Ismail court noted that Correction Law §24 was enacted to “permit correction officers to perform the demanding task of maintaining safety and security within correctional facilities undeterred by the fear of personal liability and vexatious suits” and concluded that, in light of this legislative intent, Correction Law §24’s protections for acts “within the scope of the employment and in the discharge of the duties” encompassed “only those aspects of employment that involve interaction between inmates and correction officers or employees” and did not apply to the defendant’s operation of a vehicle (Ismail v Singh, 3 Misc 3d 188, 191 [Sup Ct, Kings County 2003] [internal citations and quotations omitted]).

² As no countervailing authority has been issued from any other department of the Appellate Division, the decision of the Appellate Division, Third Department is binding on this Court (See e.g., People v Shakur, 215 AD2d 184 [1st Dept 1995]; Mtn. View Coach Lines, Inc. v Storms, 102 AD2d 663, 664 [2d Dept 1984]).

Similarly, in Crist v Rosenberger, 72 Misc 3d 436, 449-50 (Sup Ct, Orange County 2021), defendant, a parole officer employed by DOC, driving from the address of one parolee to see another parolee when he hit plaintiff pedestrian, was found to be acting within the scope of his employment but not in the discharge of his duties (i.e., directly overseeing parolees) such that the statute applied.

Kuinlan argues that Ismail and Crist are distinguishable because the plaintiff in those cases was not an inmate being transported by a Correction Officer, as is the case here. The Court does not consider this a dispositive distinction—“[t]he fact that it was an inmate who was injured as a result of [Kuinlan’s] alleged negligence in operating the vehicle does not change the fact that [Kuinlan] owed an individual duty to operate the vehicle in a safe and reasonable manner to not only the passengers in [the] van, but also, to the other motorists on the road” (Rodriquez v Frgt. Masters, Inc., 2009 WL 8614532 [Sup Ct, NY County 2009]).

Accordingly, it is

ORDERED that the motion by First Transit, Inc. and Robin Kuinlan for summary judgment dismissing this action is denied; and it is further

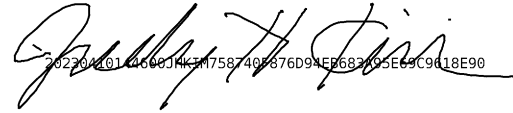
ORDERED that counsel for plaintiff is directed to serve a copy of this decision and order, with notice of entry, upon defendants within fifteen days of the date of this decision and order; and it is further

ORDERED that plaintiff shall serve a copy of this decision and 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 this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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4/10/2023

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