

Allen v New York City Tr. Auth.

2023 NY Slip Op 33454(U)

September 28, 2023

Supreme Court, New York County

Docket Number: Index No. 150116/2015

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 22M

Justice

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ANGELIN ALLEN,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY, GVC
II, INC., CORP TRANS GROUP (CTG), UG IMPERIAL INC.,
ALLSTATE PRIVATE CAR & LIMOUSINE, INC., HUSAN
MAMAJONOV

Defendant.

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INDEX NO. 150116/2015
MOTION DATE 10/10/2022
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162

were read on this motion to/for JUDGMENT - SUMMARY

Upon review of the foregoing documents, the motion by Defendants Corporate Transportation Group (CTG) and Allstate Private Car & Limousine (Allstate) motion for summary judgment in their favor is granted for the reasons below.

Background

In this personal injury action, Plaintiff alleges that she was injured as she descended from an Access-A-Ride vehicle on January 19, 2014, in front of her residence (amended complaint NYSCEF Doc No. 5). Plaintiff describes the vehicle as a multi-passenger van (plaintiff deposition transcript, NYSCEF Doc No. 153 at 9). She states the van was very high from the ground with no step, which caused her to fall as she exited (NYSCEF Doc No. 153 at 20 lines 9-13). She describes the van as a dark blue navy color with multiple rows of bench seating (plaintiff examination before trial, NYSCEF Doc No. 136 at 74 lines 17-18, 75 lines 4-15).

Plaintiff's complaint alleges that CTG was an agent, contractor, servant and/or employee of NYCTA and MTA, both of which the court dismissed from the case as Defendants (NYSCEF

Doc No. 5 ¶ 8; order, NYSCEF Doc No. 163)¹. Joseph Civello, a representative of CTG, testified that CTG is a clearinghouse for black cars. When a request for a ride comes to CTG, it uses a computerized dispatch system, and the drivers/black car companies, as independent contractors, choose whether to take the job (Civello Deposition Transcript, NYSCEF Doc No. 153 9-10). After the ride, the independent contractors submit a voucher and CTG pays the voucher (*id.* at 9). Within its system, CTG has about 400 franchise drivers and about seven different companies including Allstate (*id.* at 10-11). CTG also works with Access-a-Ride to provide vehicles and drivers for its services (*id.* at 12, 14). Civello testified that all vehicles associated with CTG and Allstate are either sedans, minivans, or SUVs (Civello affidavit, NYSCEF Doc No. 130 ¶ 9).

Plaintiff commenced a separate action in Supreme Court, Kings County against Allstate and Husan Mamajonov, the alleged driver of vehicle, which was consolidated with the present action (NYSCEF Doc No. 59). She asserts that the voucher from the day of the accident includes a car number, 5060, which she alleges corresponds to Allstate (affirmation in opposition, NYSCEF Doc No. 144 ¶ 61). Plaintiff alleges that Allstate was also an agent, contractor, franchisor, servant and/or employee of NYCTA and/or MTA and/or CTG (NYSCEF Doc No. 59 at 48). The complaint further alleges that Allstate and Mamajonov were in exclusive control and operation of the vehicle bearing license plate number 1627417C in which Plaintiff was allegedly riding at the time of her fall (*id.*). The plate number 1627417C is registered as a blue Toyota four door sedan owned by Defendant UG Imperial Inc. (registration plate record, NYSCEF Doc No. 122).

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If the moving party tenders sufficient evidentiary proof, the opposing party must proffer its own evidence to show disputed material facts requiring a trial (*id.*). However, the reviewing court should accept as true both the opposing party's evidence and any evidence proffered by the movant that favors the opposing party (*Aguilar v City of New York*, 162 AD3d 601, 601 [1st Dept 2018]). Further, the court should give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

¹ In motion sequence 004, the court granted summary judgment to defendants NYCTA and MTA, but made no further decision regarding the remaining defendants (NYSCEF Doc No. 163).

Discussion

Allstate and CTG argue that summary judgment is appropriate because Plaintiff's injury happened while she descended from a large blue passenger van with multiple rows of seats, and neither Allstate nor CTG dispatches large passenger vans, nor possesses the licenses required by the New York State Department of Transportation for such vans (statement of material facts, NYSCEF Doc No. 140 ¶¶ 10-13). Allstate and CTG state that they only possess black car base licenses issued by the New York City Taxi & Limousine Commission, which may only be used to dispatch a sedan, SUV, or minivan (*id.* ¶¶ 13-14). Thus, they claim, plaintiff could not have been in one of their vehicles.

The car number on the voucher purported by Plaintiff to connect CTG and Allstate to the accident is number 5060 with a date of January 19th (voucher, NYSCEF Doc No. 101). Defendants provide the Job Details associated with car number 5060 on January 19, 2014 (job details, NYSCEF Doc No. 161). The Job Details state that Plaintiff was one of two passengers, and it provides the details of her pickup at the hospital and drop off at her home. Furthermore, the Job Details state the car used was a sedan. Allstate and CTG provide copies of the registration and for-hire vehicle insurance certificate for Co-Defendant Mamajonov², who allegedly was the driver at the time of the accident, and which reflect that he operates a 2009 Toyota Camry (NYSCEF Doc No. 137). Allstate and CTG speculate that Plaintiff is mistaken as to the date on which her accident occurred and that this caused plaintiff to identify the incorrect voucher number, which in turn incorrectly implicated Allstate, CTG, and Mamajonov (memorandum of law, NYSCEF Doc No. 141 at 5).

Plaintiff argues that even though this evidence purportedly shows that the vehicle described by the Job Details of the voucher is a sedan, not a passenger van, a question of fact still remains as to whether CTG and Allstate dispatched the vehicle. Plaintiff states that the voucher does not indicate the license plate number, vehicle description, or name of the driver, a vehicle dispatched by CTG and Allstate may still be involved (NYSCEF Doc No. 144 ¶ 65). Plaintiff argues that even if Mamajonov did not drive or own a passenger van and Allstate and CTG do not possess the licenses for such vans, Allstate and CTG may still have been the dispatchers of the vehicle. In support, Plaintiff relies on her sister's testimony, who was with her at the time of the

² The present motion for summary judgment is brought only by defendants Allstate and CTG. As such, the court does not evaluate defendant Mamajonov's alleged liability in this decision.

accident. Plaintiff's sister describes the vehicle as a silver-colored minivan (Marzett affidavit, NYSCEF Doc No. 155 at ¶ 7). Plaintiff argues that Allstate and CTG's license would cover minivans, which makes it plausible that Allstate and CTG dispatched the vehicle.

The court rejects this argument. Plaintiff's sister's description is in direct opposition to Plaintiff's sworn testimony that she was injured while stepping out of a dark blue passenger van (NYSCEF Doc No. 136 at 74 lines 17-18, 75 lines 4-15). Now, Plaintiff suggests that her sister may be correct, in that the vehicle was actually a silver minivan, thus creating a triable issue of fact (NYSCEF Doc No. 144 ¶ 66). Furthermore, it is uncontroverted that the voucher and Job Details associated with the voucher show that a sedan was the vehicle that picked up plaintiff on January 14. Plaintiff has not provided the court with evidence, such as another voucher, showing she was picked up on January 14, 2014, by a passenger van or minivan associated with CTG and Allstate. Plaintiff testifies that she has used Access-a-Ride services in the past, including earlier on January 14, 2014 (NYSCEF Doc No. 152 at 12 lines 12-20, at 13 line 2). Plaintiff testifies that she was first picked up by an Access-a-Ride vehicle on the way to the hospital and then picked up by what she describes as a "broker van" arranged through Access-a-Ride to go home (NYSCEF Doc No. 152 at 12 lines 18-23).

As previously stated, CTG contracted with the NYCTA to execute rides for its Access-a-Ride program. Plaintiff testified that Access-a-Ride uses its own vehicles as well as vehicles through contractors, such as CTG, which she calls "broker" vehicles. Furthermore, as stated, CTG has contracted with Allstate as one of its seven companies and 400 franchise drivers to provide the cars and drivers. These facts demonstrate that CTG and Allstate are not the exclusive provider of drivers and vehicles for the Access-a-Ride program. Without a voucher specifically implicating CTG and Allstate as dispatching a passenger van or minivan, the claims against CTG and Allstate are merely speculative as to whether CTG and Allstate were the entities associated with the vehicle involved in Plaintiff's accident.

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]), and "speculative arguments are insufficient to raise triable issues of fact" (*Schloss v Steinberg*, 100 AD3d 476, 476 [1st Dept 2012]). A plaintiff's contention that her claim is not impossible rests on "mere speculation," which "is insufficient to defeat a motion for summary judgment" (*Espinal v Trezechahn 1065 Ave. of Ams., LLC*, 94 AD3d 611,

613 [1st Dept 2012]). The court grants CTG and Allstate's motion for summary judgment for the reasons stated.

Accordingly, it is hereby

ORDERED that Allstate and CTG's motion for summary judgment is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor Defendants CORPORATE TRANSPORTATION GROUP and ALLSTATE PRIVATE CAR & LIMOUSINE, dismissing the claims and cross-claims against them; it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal of Defendants CORPORATE TRANSPORTATION GROUP, ALLSTATE PRIVATE CAR & LIMOUSINE, NEW YORK CITY TRANSIT AUTHORITY, and METROPOLITAN TRANSPORTATION AUTHORITY³ and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the new caption shall read as follows:

ANGELIN ALLEN,

Plaintiff,

- v -

GVC II, INC., UG IMPERIAL INC., and HUSAN MAMJONOV,

Defendants.

And it is further

ORDERED that counsel for Defendants CORPORATE TRANSPORTATION GROUP and ALLSTATE PRIVATE CAR & LIMOUSINE shall serve a copy of this order with notice of entry upon the Clerk of the Court within 20 days, and the Clerk shall note the new caption in the records; and it is further

³ The court previously dismissed the complaint against defendants New York Transit Authority and Metropolitan Transportation Authority. The court ordered that the papers reflect the dismissal of these defendants. As it is not clear that this change was made, it reiterates the directive here (order, NYSCEF Doc No. 163).

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).

This constitutes the Decision and Order of the Court.

9/28/2023

DATE

James G. Clynes
JAMES G. CLYNES, 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