

**McCrae v City of New York**

2023 NY Slip Op 34139(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 157468/2022

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 52**

*Justice*

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INDEX NO. 157468/2022

ALFRED ALPHONZO MCCRAE,

MOTION DATE 04/14/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, METROPOLITAN  
TRANSPORTATION AUTHORITY, METRO TRANSIT  
AUTHORITY, NYC TRANSIT AUTHORITY, MTA BUS  
COMPANY, COSLEY WILLIAMS, DANTE HARRIS

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, as set forth more fully on the record, it is

Plaintiff moves for summary judgment on liability on the basis that he was an innocent passenger in a car involved in an accident with a bus. Defendants City of New York, the Metropolitan Transportation Authority, Metro Transit Authority, New York City Transit Authority i/s/h/a NYC Transit Authority and MTA Bus Company move to dismiss the complaint. Plaintiff testified at his GML § 50-h hearing that he was asleep in the backseat of his friend's car at the time the accident occurred and had no knowledge of how the accident occurred.

Documentary evidence in the form of a DMV title abstract, as well as defendant New York City Transit Authority's admission in its answer, show that the owner of the bus allegedly involved in the accident was owned by the New York City Transit Authority, not the City of New York, the Metropolitan Transportation Authority, Metro

Transit Authority, or MTA Bus Company. Accordingly, these defendants are entitled to dismissal of the complaint against them as they did not own, operate, or control the bus involved in the accident.

Plaintiff's sworn statement that he was a passenger in the car that was involved in the accident is unrebutted. Therefore, plaintiff is entitled to a finding that he was free from culpable conduct on the issue of liability (*see Garcia v Tri-County Ambulette Serv., Inc.*, 282 AD2d 206, 207 [1st Dept 2001]). However, plaintiff has not met his prima facie burden to show that the defendants are liable. Plaintiff has admitted, at his GML § 50-h hearing that he was asleep at the time of the accident and does not know how it occurred. "[A]n innocent passenger must still establish a defendant driver's liability under traditional principles of tort liability in order to prevail on the issue of liability against that driver" (*Campbell v Mincello*, 184 AD3d 412 [1st Dept 2020]). Furthermore, the defendants' seatbelt defense may still be considered on the question of plaintiff's damages and mitigation thereof (*see Garcia, supra*).

For the reasons set forth herein and as set forth more fully on the record, it is hereby

ORDERED that the plaintiff's motion for summary judgment is granted to the extent that plaintiff was free from culpable conduct on the issue of liability, and the affirmative defense of comparative negligence is dismissed, and is otherwise denied; and it is further

ORDERED that the cross-motion of defendant THE CITY OF NEW YORK to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the

Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the cross-motion of defendant NEW YORK CITY TRANSIT AUTHORITY i/s/h/a NYC TRANSIT AUTHORITY for summary judgment is denied; and it is further

ORDERED that the cross-motion of defendants METROPOLITAN TRANSPORTATION AUTHORITY, METRO TRANSIT AUTHORITY and MTA BUS COMPANY to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and 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 and that all future papers filed with the court bear the amended caption; and it is further

ORDERED, that as no remaining party is represented by corporation counsel (NYC Law Department), and the New York City Transit Authority remaining as a defendant, this action, including any pending motions, is remitted to the General Clerk's Office for reassignment to the Transit Part; and it is further

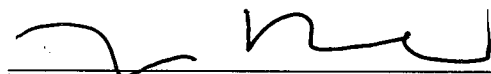
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

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)].

This constitutes the decision and order of the court.

11/1/2023

DATE



NICHOLAS W. MOYNE, 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