

Miles-Forde v Green Line Taxi Inc.
2023 NY Slip Op 34208(U)
November 17, 2023
Supreme Court, Kings County
Docket Number: Index No. 522300/2020
Judge: Ingrid Joseph
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 17th day of November 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
LORETTA MILES-FORDE,

Plaintiff(s)

-against-

Index No: 522300/2020

ORDER

GREEN LINE TAXI INC., HAIBO HUANG,
METROPOLITAN TRANSIT AUTHORITY, and
NEW YORK CITY TRANSIT AUTHORITY,
Defendant(s)

-----X

The following e-filed papers read herein:

Notice of Motion/Petition/Affidavits Annexed

Exhibits Annexed/Reply.....

Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:

24-30; 41-43

33-34

In this action, Metropolitan Transit Authority ("MTA") and New York City Transit Authority ("NYCTA") (Collectively "Defendants") move (Motion Seq. 1) for summary judgment dismissing Loretta Miles-Forde's ("Plaintiff") complaint on the ground that there is no statutory or common law basis for liability on behalf of Defendants. Plaintiff has opposed the motion on the ground that issues of material fact are present warranting denial of the motion. This action arises from a motor vehicle collision that occurred on November 5, 2019, wherein Plaintiff was a passenger in an Access-A-Ride vehicle.

In support of its motion, Defendants argue that they did not own, operate, maintain, manage, or control the subject motor vehicle on the date of the accident and that pursuant to Vehicle Traffic Law 388, the only entities who may be liable for injuries resulting from a motor vehicle collision are the owner and the operator of the vehicle. Defendants submit a New York State Registration Document and a Vehicle Title Record Expansion form which indicate that vehicle bearing license plate number T804247C was owned by Defendant Green Line Taxi Inc. ("Green Line Taxi") and operated by Defendant Haibo Huang ("Huang") on the date of the accident. Defendants also submit an affidavit of Ronald Roberts, the Principal Administrative Associate at the NYCTA who states that the movants did not own the subject

vehicle. Furthermore, Defendants argue that neither Green Line Taxi nor Huang were employed by nor were they agents of MTA or NYCTA and they were not given permission by MTA or NYCTA to drive the subject vehicle. Defendants state that the Access-a-Ride program that Plaintiff used as a transportation service on the date of the accident, is a city sponsored program that is not owned by the Defendants. Defendants claim that private individuals and companies that own vehicles apply for approval by NYCTA which then connects them to the Access-a-Ride program where the private individual or company will receive a transportation request and then dispatch out their own appropriate vehicles. Defendants state that they do not provide any direction or supervision as to which vehicles are used. Therefore, Defendants argue that Plaintiff has failed to provide admissible evidence to support claims that Defendants owned, maintained, operated, or controlled the vehicle involved in the motor vehicle collision.

In opposition, Plaintiff submits an EBT of Plaintiff Miles-Forde wherein she testified in part that she uses the Access-A-Ride program because she was disabled on the date of the accident and that the Access-A-Ride program provides reduced transportation costs for individuals with disabilities. Plaintiff states that on the date of the accident she reserved a ride or transportation, from the Access-A Ride-Program which sent a contractor-operated vehicle out to her home to pick her up on the day of the accident. Plaintiff argues that the Access-A-Ride-Program is operated by the moving defendants and therefore they are unable to deny responsibility for the negligence of the taxicab driver in this case. Plaintiff requests that Defendants motion should be denied to engage in discovery to ascertain details about the Access-A-Ride-Program, what if any representations the moving Defendants may have made to the users of that program, and any controls which the moving defendants may have had over the driver of the vehicle which they sent to the plaintiff for the company which hired him.

It is well established that “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” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once

a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v Nassau County*, 111 AD2d 212, [2d Dept 1985]; *Steven v Parker*, 99 AD2d 649, [2d Dept 1984]; *Galeta v New York News, Inc.*, 95 AD2d 325, [1st Dept 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]; *Rebecchi v Whitmore*, 172 AD2d 600 [2d Dept 1991]). To be entitled to summary judgment on the issue of liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Higashi v M & R Scarsdale Restaurant, LLC*, 176 AD3d 788 [2d Dept 2019]; *Webb v Scharf*, 191 AD3d 1353 [4th Dept 2021]). When a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries -- if so, the comparative fault of each party is then apportioned by the jury (*Rodriguez* at 324).

Under Vehicle Traffic Law 288, every 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.

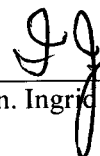
Here, the court finds that Defendants have not met their prima facie burden of establishing entitlement to summary judgment as a matter of law. Defendants rely on the affidavit of Roberts, and the New York State Registration Document and a Vehicle Title Record Expansion form of the subject vehicle, reflecting that Green Line Taxi was the registered and titled owner of the subject vehicle on the date of the accident, and that Huang was not an employee, agent or servant of Defendants. However, because the vehicle at issue was part of the Access-A-Ride program, which is administered by

Defendants, there is an issue of fact as to whether or not Defendants assumed any liability which cannot be determined based solely on the ownership or operation of the vehicle. Therefore, more information is needed to be ascertained as to the role of Defendants in the Access-A-Ride program, if any, and the regulatory framework that governs such programs.

Accordingly, it is hereby,

ORDERED, that Defendants motion for summary judgment dismissing Plaintiff's complaint is denied without prejudice with leave to renew after discovery is completed.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**