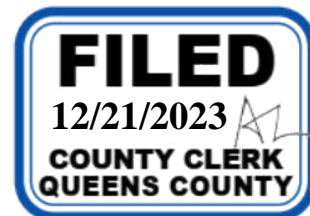


Vereen v MTA Bus Co.
2023 NY Slip Op 35068(U)
December 18, 2023
Supreme Court, Queens County
Docket Number: Index No. 716049/2017
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN IAS Part 20

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MONAT VEREEN, Index No.: 716049/2017

Plaintiff, Motion Seq. No.: 1

-against- Motion Date: 8.23.2023

MTA BUS COMPANY, NEW YORK CITY TRANSIT Motion Cal. No.: 40
AUTHORITY, KATRINA MOORER, HARJIT SINGH
and CRESCENT CAR AND LIMO INC.,

Defendants.
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The e-filed papers listed by NYSCEF Doc. Nos. 21-38 were read on: (1) the motion of the defendants MTA Bus Company (“MTA Bus”), New York City Transit Authority (“NYCTA”) and Katrina Moorer (“Moorer”) (collectively, the “Transit Defendants”) for an Order, *inter alia*, granting them summary judgment dismissing the complaint of the plaintiff, Monat Vereen (the “Plaintiff”); and (2) the Plaintiff’s cross-motion for leave to amend the notice of claim.

The Plaintiff commenced this cause seeking to recover damages for personal injuries allegedly sustained in an accident that occurred on August 20, 2016 (the “Accident”). Presently before the Court is the motion of the Transit Defendants to dismiss this cause on the theory that the notice of claim is fatally defective and the Plaintiff’s cross-motion for leave to serve an amended notice of claim. For the following reasons, the motion of the Transit Defendants is granted in part and denied in part, and the Plaintiff’s cross-motion is denied.

I. Factual Background

The Accident involved two vehicles and occurred in Queens, New York. The Plaintiff was a passenger on a bus operated by Moorer. Moorer was in the course of her employment with the owner of the bus, NYCTA, when the Accident occurred. The other vehicle was operated by Hargit Singh (“Singh”) and owned by Crescent Car and Limo, Inc. (“Crescent”). After the two vehicles collided, the Plaintiff alleges that she was caused to be thrown about the bus and injured.

II. The Notice of Claim

The notice of claim, which was timely filed, states, in relevant part, as follows:

CLAIMANT: MONAT VEREEN residing at 1040 East New York Avenue, Apt 4D, Brooklyn, NY 11212; ...

ACCIDENT INFORMATION:

- (1) Date of accident: August 20, 2016;
- (2) Time of accident: Approximately 4:00 p.m.
- (3) Location of accident: Atlantic Ave & 116 Street, Queens, NY
- (4) Description of accident: While a passenger on the Q24 bus, bus #7138, operated by Operator #411 going from Brooklyn to Supthin Blvd., Queens Bus struck another vehicle causing me to be thrown about the bus causing me personal injuries.

NATURE OF THE CLAIM: Negligence

INJURIES AND MEDICAL INFORMATION: (1) Personal injuries: Monat Vereen sustained bodily injuries to her back and right arm.

III. Discussion

A. Applicable Legal Principles

The case of *Harrison v City of New York*, 197 AD3d 630, 630-631 [2d Dept 2021], sets forth legal principles that are applicable to the presently pending motions:

A timely and sufficient notice of claim is a condition precedent to asserting a tort claim against a municipality or public benefit corporation. General Municipal Law § 50–e, in pertinent part, requires that the claimant state the nature of the claim and the time when, the place where, and the manner in which it arose. The purpose of the statutory notice of claim requirement is to afford the public corporation an adequate opportunity to investigate the circumstances surrounding the claim and to explore the merits of the claim while information is still readily available. Thus, the requirements of the statute are met when the notice describes the claim with sufficient particularity so as to enable the defendant to conduct a proper investigation thereof and to assess the merits of the claim.

Moreover, the Legislature did not intend that the claimant have the additional burden of pleading causes of action and legal theories, proper for the pleadings, in the notice of claimGeneral Municipal Law § 50–e was not meant as a sword to cut down honest claims, but merely as a shield to protect municipalities against spurious ones. As such, a claimant need not state a precise cause of action in *haec verba* in a notice of claim.

Here, the notice of claim alleges that the defendants were negligent over the course of the plaintiff's admission at Kings County Hospital from May 2, 2016,

to September 7, 2016, and describes several of the injuries that the plaintiff allegedly sustained during that period. As the notice of claim was sufficient to enable the defendants to conduct a proper investigation and assess the merits of the claim, the Supreme Court properly denied that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them [internal quotation marks, brackets, and citations omitted]).

B. The Motion of the Transit Defendants

The Transit Defendants contend that the allegations of negligence advanced in the notice of claim are "not specifically set forth" and that the negligence cause of action asserted in the complaint should thus be dismissed. This argument is baseless. The notice of claim was clearly sufficient for the Transit Defendants to conduct a proper investigation of the Accident and assess the merits of the claim. Here, among other things, the notice of claim sets forth the date, time and location of the Accident; a description of the Accident; the nature of the claim; and the injuries sustained. There is no basis whatsoever to dismiss the negligence cause of action asserted in the complaint because the notice of claim is adequate on this issue. (*see Harrison v City of New York*, 197 AD3d 630).

The branch of the Transit Defendants' motion to dismiss claims grounded in negligent entrustment is granted. These claims may not be asserted because Moorer was operating the bus within the scope of her employment with NYCTA and thus NYCTA would be liable for any negligence that she committed (*see generally, Neiger v City of New York*, 72 AD3d 663 [2d Dept 2010]; *Ashley v City of New York*, 7 AD3d 742 [2d Dept 2004]; *Karoon v New York City Tr. Auth.*, 241 AD2d 323 [1st Dept 1997]).

The branch of the Transit Defendants' motion to dismiss claims predicated upon a heightened standard of care, *i.e.*, their internal rules and policies that exceed applicable common-law standards of care, is also granted because such claims are legally without merit (*see Gilson v Metropolitan Opera*, 5 NY3d 574 [2005]; *Branham v Loews*, 31 AD3d 319 [1st Dept 2006], *aff'd.*, 8 NY3d 931 [2007]; *Brown v. Metro. Tr. Auth.*, 281 AD2d 159 [2001]).

C. The Plaintiff's Cross-Motion

The Plaintiff's cross-motion for leave to amend the notice of claim is denied because a proposed amended notice of claim is not annexed to her moving papers. In any event, amendment of the notice of claim with respect to the negligence cause of action is unnecessary because, as explained above, it is adequate on this issue.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED that the motion of the Transit Defendants is granted in part and denied in part; and it is further,

ORDERED, that the Plaintiff's claims against the Transit Defendants that are grounded in negligent entrustment and heightened standard of care are dismissed; and it is further,

ORDERED, that the motion of the Transit Defendants is otherwise denied; and it is further,

ORDERED that the Plaintiff's cross-motion is denied; and it is further,

ORDERED, that the Transit Defendants shall serve a copy of this Order with Notice of Entry upon all parties via NYSCEF by February 1, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
December 18, 2023



MOJGAN C. LANCMAN, J.S.C.

