

**Young v Ahmed**

2023 NY Slip Op 35087(U)

September 28, 2023

Supreme Court, Queens County

Docket Number: Index No. 702378/2018

Judge: Mojgan C. Lancman

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This opinion is uncorrected and not selected for official publication.

**Short Form Order**

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN IAS Part 20

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CHRISTOPHER L. YOUNG,

Plaintiff,

-against-

SADDAM AHMED, NY4 LEASING CORP., MTA NEW  
YORK CITY TRANSIT, NEW YORK CITY TRANSIT  
AUTHORITY and OLWALDO PARRA,

Defendants.

Index No.: 702378/2018

Motion Seq. No.: 8

Motion Date: 5.24.2023

Motion Cal. No.: 36



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The papers listed by NYSCEF Doc. Nos. 103-126 were read on the motion made by the defendants Metropolitan Transportation Authority i/s/h/a MTA New York City Transit (the “MTA”), New York City Transit Authority (“NYCTA”) and Olwaldo Parra (“Parra”) (collectively, the “Transit Defendants”) for, *inter alia*, summary judgment.

The plaintiff, Christopher Young (the “Plaintiff”), commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on April 22, 2017 in Queens County, New York (the “Accident”). Presently before the Court is the motion filed by the Transit Defendants to dismiss the complaint and all cross-claims asserted against them based upon either CPLR §§ 3211 and/or 3212. For the following reasons, the motion is granted pursuant to CPLR § 3212.

**I. Factual Background**

The Accident occurred at or about the Pulaski Bridge near its intersection with Jackson Avenue, Queens, New York. Two vehicles, a bus and a car, were involved. The bus was owned by NYCTA and operated by one of its employees, Parra. The Plaintiff was a passenger in the bus. The car was operated by Saddam M. Ahmed (“Ahmed”) and owned by NY4 Leasing Corp. (“NY4”) (collectively, the “Ahmed Defendants”).

The admissible evidence on this motion demonstrates that the essential facts are undisputed. Here, there is a video of the Accident that has been authenticated and the affidavit of Parra. Ahmed and NY4 Leasing do not submit an affidavit in opposition because they have been precluded from doing so pursuant to this Court’s Order dated July 20, 2022. The subject Order is predicated upon Ahmed’s repeated failure to appear for a deposition. The Plaintiff testified at his deposition that he did not see the Accident.

Preliminarily, the properly authenticated video eliminates any triable issue of fact as to how the Accident occurred (*see Pappas v New York City Transit Authority*, 208 AD3d 890 [2d Dept 2022]).

The video and Parra's affidavit, which is consistent with the video, reveal the following: the Accident occurred on the roadway of the Pulaski Bridge while the bus was in the right lane; the bus was continuously in the right lane of the Pulaski Bridge from when it entered the roadway until the Accident; Parra first observed Ahmed's vehicle, which was in motion, about three blocks away; Parra began proceeding over Jackson Avenue after the light he had been stopped at turned green; Parra went across the intersection and started to go up the Pulaski Bridge roadway when he saw Ahmed making a short turn onto the bridge; because there was a yield sign at this location facing Ahmed, Parra continued moving on the roadway; Parra then felt a bump and realized that the bus had been hit by Ahmed's vehicle from the right.

In sum, the record demonstrates that Ahmed was attempting to enter the Pulaski Bridge roadway from Jackson Avenue; that Ahmed had a yield sign; that Ahmed failed to yield the right of way; and that Parra, who had the right of way, had no time to avoid the Accident.

## II. Discussion

### A. The MTA's Application for Summary Judgment

The MTA is entitled to summary disposition based on well-settled law.

"[T]he functions of the MTA with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility" [internal quotation marks and citations omitted]" (*Delacruz v Metropolitan Transp. Authority*, 45 AD3d 482, 483 [1st Dept 2007]).

It is also well-established that the MTA "... is not vicariously liable for the torts of its subsidiaries [citations omitted]" (*Fridman v New York City Tr. Auth.*, 131 AD3d 1202, 1203 [2d Dept 2015]). Here, the bus was owned by NYCTA and operated by one of its employees, Parra. NYCTA is a subsidiary of the MTA; thus, the MTA cannot be held vicariously liable for torts committed by NYCTA (*see Public Authorities Law* § 1266 [5]; *Brunson v City of New York*, 150 AD3d 1189 [2d Dept 2017]; *Fridman v New York City Tr. Auth.*, 131 AD3d 1202; *Mayayev v Metropolitan Transp. Auth. Bus*, 74 AD3d 910, 911 [2d Dept 2010]; *Rampersaud v Metropolitan Transp. Auth. of the State of N.Y.*, 73 AD3d 888 [2d Dept 2010]; *Emerick v Metropolitan Transp. Auth.*, 272 AD2d 150 [2d Dept 2000]).

### B. The Application for Summary Judgment of NYCTA and Parra

VTL §1142 [b] provides as follows:

The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for existing conditions, or shall stop if necessary as provided in section eleven hundred seventy-two, and

shall yield the right of way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. Provided, however, that if such driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed *prima facie* evidence of his failure to yield the right of way.

NYCTA and Parra establish *prima facie* entitlement to summary judgment because the Accident took place as Ahmed was entering the intersection; Ahmed had a yield sign facing him at the intersection; Parra had no yield sign in the direction that he was traveling in; and Ahmed had the responsibility to give the right of way to Parra (*see Lupowitz v Fogarty*, 295 AD2d 576 [2d Dept 2002]).

The opposition fails to raise a triable issue of fact. Here, the Plaintiff, Ahmed and NY4 do not submit affidavits in opposition. The attorney affirmations submitted in opposition fail to raise any triable issues of fact because they have “no probative value in opposition to a summary judgment motion” (*Commissioners of the State Ins. Fund v Sanitation Salvage Corp.*, 187 AD3d 537, 537 [1st Dept 2020]).

The opposition argument that the police accident report should be considered because it contains a statement attributable to Ahmed that Parra sideswiped Ahmed’s vehicle is without basis. First, the police accident report is inadmissible because it is not certified and a foundation for its admissibility has not been laid by any other method (*see Yassin v Blackman*, 188 AD3d 62 [2nd Dept 2020]). Second, Ahmed’s purported statement constitutes self-serving hearsay. Third, it would be manifestly unjust to permit Ahmed, who has been precluded from submitting an affidavit in opposition to any motion for summary judgment and from testifying at trial, to oppose this motion based upon a purported statement that he made in an inadmissible police accident report. Fourth, and in any event, as noted, the video eliminates any triable issue of fact as to how the Accident occurred (*see Pappas v New York City Transit Authority*, 208 AD3d 890).

The remaining opposition arguments are without merit.

## II. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the motion is granted to the extent indicated below; and it is further,

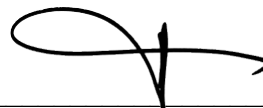
ORDERED, that MTA, NYCTA and Parra are granted summary judgment; and it is further,

ORDERED, that the complaint and cross-claims insofar as asserted against MTA, NYCTA and Parra are dismissed; and it is further,

ORDERED, that the MTA, NYCTA and Parra shall serve a copy of this Order with Notice of Entry upon the Plaintiff, Ahmed and 4NY via NYSCEF by November 27, 2023.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York  
September 28, 2023



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MOJGAN C. LANCMAN, J.S.C.

