

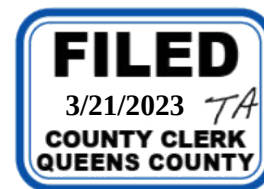
Goldman v New York City Tr. Auth. (NYCTA)
2023 NY Slip Op 35202(U)
March 21, 2023
Supreme Court, Queens County
Docket Number: Index No. 712155/2020
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

IAS Part 20

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GAIL GOLDMAN,

Index No.: 712155/2020

Plaintiff,

Motion Seq. No.: 1

-against-

Motion Date: 11.16.2022

NEW YORK CITY TRANSIT AUTHORITY (NYCTA),
ACCESS A RIDE, VERMOUTH TAXI INC. AND
MOUSTAPHA DOLL,

Motion Cal. No.: 9

Defendants.
-----X

The e-filed papers bearing NYSCEF document numbers 31-44 were read on the motion of the defendants New York City Transit Authority ("NYCTA") and Access A Ride ("Access-A-Ride") (collectively, the "Defendants") for summary judgment.

The Plaintiff, Gail Goldman (the "Plaintiff"), commenced this action seeking to recover damages for bodily injuries allegedly sustained in a motor vehicle accident (the "Accident").

Presently before the Court is the Defendants' motion for summary judgment dismissing the Plaintiff's complaint and the cross-claims of the co-defendants, Vermouth Taxi Inc. ("Vermouth") and Moustapha Doll ("Doll") (collectively, the "Co-Defendants"). For the following reasons, the motion is granted.

I. Factual Background

The Accident occurred on November 1, 2019. The Plaintiff alleges that the Accident took place as she was exiting a vehicle owned by Vermouth and operated by Doll (the "Vehicle"). The Vehicle was being operated as part of the Access-A-Ride program.

It is claimed that while the Plaintiff was exiting the Vehicle, the Vehicle moved forward, causing the Plaintiff to fall to the ground in front of 32-15 Anchor Drive, Far Rockaway, New York.

Access-A-Ride is a paratransit service administered by NYCTA that connects eligible customers with disabilities or health conditions to private parties or corporations that are willing to provide public transportation services for lower fees and that provides supplemental funding for such services.

NYCTA's involvement with the Access-A-Ride program relates to contracting with facilities that provide their own vehicles and drivers.

It is undisputed that neither NYCTA nor Access-A-Ride owned, operated, controlled, or maintained the Vehicle. Rather, the Vehicle was owned by Vermouth.

It is also undisputed that the operator of the Vehicle, Doll, was not an employee, agent, or servant of NYCTA or Access-A-Ride at the time of the Accident.

II. Discussion

The familiar principles applicable to summary judgment motions are set forth below.

The “function of summary judgment is issue finding, not issue determination” (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the “drastic” remedy of summary judgment, the movant “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 from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). However, the failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

VTL § 388 states, in relevant part, as follows: “[e]very 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” [*Emphasis added*]. The record conclusively establishes: (1) that the Defendants did own, operate, control, or maintain the Vehicle; (2) that the Defendants did not employ the operator of the Vehicle, Doll; (3) and that the Vehicle was owned by Vermouth. The Defendants establish *prima facie* entitlement to summary judgment pursuant to said statutory provision because they did not own or operate the Vehicle (*see Woods v Craig*, 41 AD3d 1260 [4th Dept 2007]; *Peele v Manhattan & Bronx Surface Tr. Operating Auth.*, 160 AD2d 602 [1st Dept 1990]).

The Defendants also establish that they are not liable under a theory of *respondeat superior* for Doll's alleged negligence because they did not employ him (*see Barnes-Joseph v Smith*, 73 AD3d 494 [1st Dept 2010]).

The remaining issue is whether, as the Plaintiff suggests, there was a special duty between her and the Defendants. When a municipality acts in a governmental capacity, a plaintiff may not recover without proving that the municipality owed a special duty to him or her (*see Valdez v City of New York*, 18 NY3d 69 [2011]). The fundamental principle underpinning this rule is that "... to sustain liability against a municipality, the duty breached must be more than that owed the public generally" (*see id.*, at 75) [internal quotation marks and citation omitted]). A plaintiff bears the burden of establishing a special relationship, and "where the plaintiff fails to meet this burden, the analysis ends and liability may not be imputed to the municipality that acted in a governmental capacity" (*Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 426 [2013]) [citations omitted]).

In order to demonstrate a special relationship beyond the duty that is owed to the public generally, four elements must be established: "(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking" (*see id.*, at 430-431 [citations and internal quotation marks omitted]).

The Plaintiff asserts that she phoned Access-A-Ride requesting transportation on the day of the Accident, which resulted in Doll transporting her, and that she believed that "... a reasonably safe mode of transportation [would be provided]." A special duty was not created because the Defendants did not owe the Plaintiff any duty greater than that owed to other Access-A-Ride program participants.

In any event, even if there was a special relationship with the Defendants, which there is not, the Defendants did nothing more than to dispatch the Vehicle to transport the Plaintiff. The Defendants did not operate or control the operation of the Vehicle and made no promises and took no action with respect to how Doll operated the Vehicle. Thus, the Plaintiff fails to establish all of the elements required to establish a special relationship (*see Applewhite v Accuhealth, Inc.*, 21 NY3d 420).

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the motion is granted; and it is further,

ORDERED, that NYCTA and Access-A-Ride are granted summary judgment, and that the complaint and all cross-claims insofar as asserted against them are hereby dismissed; and it is further,

ORDERED, that the Defendants shall serve a copy of this Order with notice of entry upon

the Plaintiff and the Co-Defendants by May 19, 2023.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
March 21, 2023



MOJGAN C. LANCMAN, J.S.C.

