

Coronado v Veolia N. Am. Inc. & Subsidiaries

2024 NY Slip Op 30287(U)

January 22, 2024

Supreme Court, New York County

Docket Number: Index No. 450319/2019

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 450319/2019

HEIDI ALBERTO CORONADO

MOTION SEQ. NO. 008

Plaintiff

- v -

VEOLIA NORTH AMERICA INC. & SUBSIDIARIES,
HAROLD EDDINS, NEW YORK CITY TRANSIT
AUTHORITY, METROPOLITAN TRANSIT AUTHORITY, MV
TRANSPORTATION, INC., RELIANT TRANSPORTATION
INC., TIMOTHY EDWARDS

**DECISION AND ORDER ON
MOTION**

Defendants

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214

were read on this motion to/for JUDGMENT - SUMMARY.

For the reasons that follow and following oral argument, Plaintiff's motion seeking summary judgment against Defendants VEOLIA NORTH AMERICA INC. & SUBSIDIARIES and HAROLD EDDINS is granted.

Background

This personal injury matter arises out of a June 6, 2017 motor vehicle collision at an apparent enclosed dead-end non-exit road for the purpose of ambulance entrances and apparently also used for taxis and other vehicles to pick up and drop people to the Weil Cornell Center Hospital and the NY Presbyterian Hospital, at or about East 70th Street between York Avenue and FDR in Manhattan. Plaintiff alleges that while a passenger on a stationed "Access-A-Ride" vehicle, another vehicle operated by Defendant HAROLD EDDINS (EDDINS) and owned by VEOLIA NORTH AMERICA INC. & SUBSIDIARIES (VEOLIA NORTH AMERICA, collectively VEOLIA DEFENDANTS) struck the Access-A-Ride vehicle causing her serious injuries.

Pre-discovery Plaintiff moved for summary judgment against Veolia Defendants (Motion Seq. 1). By Order of Judge Lisa Ann Sokoloff, dated October 11, 2019, the motion was denied with leave to renew following the depositions of the parties. Plaintiff appealed the decision and the Appellate Division, First Department by Order dated November 17, 2020, affirmed Judge Sokoloff's decision.

Following the completion of the depositions, Plaintiff filed a motion to renew/reargue the summary judgment motion (Motion Seq. 5). Plaintiff's motion was denied as it wasn't seeking a proper remedy and Plaintiff was granted leave to refile a summary judgment motion in accordance with 22 NYCRR 202.8-g [d] and Part 21 rules (NYSCEF Doc. 173). Instead of refiling the summary judgment motion, Plaintiff again filed a motion to renew/reargue (Motion Seq. 7), which was again denied as procedurally improper and Plaintiff was again directed to refile the summary judgment motion, which Plaintiff has now done. (NYSCEF Doc. 192).

Plaintiff now moves again for summary judgment against Veolia Defendants (Motion Seq. 8). Plaintiff also seeks dismissal of all affirmative defenses as to liability. Veolia Defendants oppose.

Discussion

Pursuant to CPLR 3212, any party in any action, including in a negligence action may move for summary judgment (CPLR 3212 [a], *Andre v. Pomeroy*, 35 NY2d 361 [1974]). However, the movant has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form that dispels all material questions of fact requiring a trial (*see* CPLR 3212 [b], *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986], *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Furthermore, it is well settled that an innocent passenger in a motor vehicle accident generally has the right to summary judgment regardless of comparative negligence between the drivers or the different versions of how the accident occurred (*see Garcia v. Tri-Cnty. Ambulette Serv., Inc.*, 282 AD2d 206 [1st Dept 2001]; *see Petty v. Dumont*, 77 AD3d 466 [1st Dept 2010];

Hobbs v MTA Bus Co., 211 AD3d 471, 472 [1st Dept 2022]; *Mello v Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]; *Campbell v Mincello*, 184 AD3d 412 [1st Dept 2020]; *Johnson v. Phillips*, 261 AD2d 269 [1st Dept 1999]; *Service v McCoy*, 131 AD3d 1038 [2nd Dept 2015]; *see e.g. Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

In addition, under certain circumstances, the rear-end presumption of negligence may be applicable when a driver of a vehicle strikes a stopped vehicle. The rear-end collision presumption is based on the logical inference that a vehicle that strikes a stopped vehicle or a vehicle coming to a stop, lacked prudent driving, did not maintain a safe distance to avoid a collision, nor maintained control of the operation of the vehicle (see e.g., VTL §1129; *Kalair v Fajerman*, 202 AD3d 625 [1st Dept 2022] citing *Urena v GVC Ltd.*, 160 AD3d 467[1st Dept 2018]; *see also Williams v. Kadri*, 112 AD3d 442 [1st Dept 2013]; *Matos v. Sanchez*, 147 AD3d 585 [1st Dept 2017; *Service*, 131 AD3d 1038]. Thus, even if the striking is not at the rear of the stationed or parked vehicle, the presumption of negligence may apply (*see e.g., id.*).

Here in support of the motion, Plaintiff establishes its burden with her deposition testimony, the deposition testimony of Eddins, and an accident report. Upon review, the following is undisputed. Plaintiff was a passenger in a stationed/parked Access-A-Ride vehicle at the time of the accident. The Access-A-Ride vehicle was at the hospital's loading dock area picking up Plaintiff and her child and or children. As per Eddins' sworn testimony he saw the stationed Access-Ride vehicle as it entered the loading dock area. He also testified that in attempting to park and pick up a passenger, he collided with the Access-Ride- vehicle.

In opposition, the Veolia Defendants argue that issues of fact exist as to whether Access-A-Ride Defendants also bear liability for the collision, as the Access-A-Ride vehicle was stopped five feet from the curb and did not have its hazard lights engaged. However, under the facts and circumstances here, this Court finds that it is immaterial whether the Access-A-Ride vehicle was

parked five or two feet from the curb or had its hazard lights on. As negligent driving can be inferred by Eddins, and the Veolia Defendants have not provided a non-negligent explanation for failing to maintain a safe distance from the stationed Access-A-Ride vehicle (see e.g., *Kalair*, 202 AD3d 625; *Urena*, 160 AD3d 467). Here the accident occurred on a loading dock/ dead end road of the hospitals for the ambulances to park. It was not a highway nor a crowded multiple lane street. The Access-A-Ride vehicle was not moving at the time of the collision, and the Veolia Defendants through the sworn testimony of the driver admitted to seeing the parked Access-A-Ride vehicle as he entered East 70th Street and the collision occurred while the Veolia vehicle was attempting to park.

Thus, Plaintiff has met her *prima facie* burden in establishing entitlement to judgment as a matter of law as an innocent passenger and establishing that the Veolia Defendants were negligent in operating the vehicle resulting in Plaintiff's injuries. Moreover, Defendants have not raised a material issue of fact warranting a trial.

Accordingly, it is ORDERED that Plaintiff's motion seeking summary judgment against Defendants VEOLIA NORTH AMERICA INC. & SUBSIDIARIES and HAROLD EDDINS is granted; and it is further

ORDERED that Plaintiff's motion to dismiss Defendants' affirmative defenses regarding comparative fault/culpable conduct is also granted; and it is further

ORDERED that Plaintiff shall serve a copy of this order with notice of entry upon the parties within 30 days and upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records;

1/22/2024
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

HON. DENISE M. DOMINGUEZ

J.S.C.