

Hill v City of New York
2024 NY Slip Op 35571(U)
February 20, 2024
Supreme Court, Bronx County
Docket Number: Index No. 815061/2022E
Judge: Bianka Perez
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.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

JUANITA HILL,

Index №.: 815061/2022E

Plaintiff,

-against-

Hon. BIANKA PEREZ

CITY OF NEW YORK, NEW YORK CITY
TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY ACCESS-A-
RIDE, METROPOLITAN TRANSPORTATION
AUTHORITY, GVC II INC., JOHN DOES 1-2
(unknown vehicle operators),

Justice Supreme Court

Defendants.

The following documents were read on this motion and cross-motion (**Seq No. 1**) submitted on **October 16, 2023**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	Nyscef No(s). 20-28
Cross-Motion Answering Affidavit and Exhibits	Nyscef No(s). 32-40
Opposition Affirmations and Exhibits	Nyscef No(s). 30-31, 42
Reply Affidavit and Exhibits	Nyscef No(s). 41

Upon the foregoing papers, defendants move for an Order pursuant to CPLR §3211 and §3212 dismissing the CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN TRANSPORTATION AUTHORITY from the action as these defendants did not own, operate or otherwise control the vehicle alleged to have been involved in the accident and for an Order pursuant to CPLR §3212 dismissing NEW YORK CITY TRANSIT AUTHORITY (NYCTA) and GVC II INC. from the action as neither bear liability for this hit in the rear accident. Plaintiff partially opposes the motion and cross-moves for an Order, pursuant to CPLR 3025(b), for leave to amend the complaint and permitting the plaintiff to serve and file a Supplemental Summons and Amended Verified Complaint in this matter adding Shekh Monwar and Tanisha L. Delgado.

In this motor vehicle action, the complaint alleges that on the day of the accident, March 19, 2022 Plaintiff was a passenger in a vehicle owned by defendant, NYCTA and leased to defendant, GVC II, Inc. and driven by John Doe (now know to be Shekh Monwar) which was

struck in the rear by a vehicle driven by John Doe 2 (now known to be Tanisha L. Delgado) while on the Northbound lane of the Willis Avenue Bridge.

Defendants Notice of Motion

Defendants, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN TRANSPORTATION AUTHORITY move to dismiss as they did not own, operate or control the vehicle alleged to be involved in the accident and argue that in absence of a duty, there can be no liability imposed upon them. Defendants further argue that the vehicle owned by NYCTA and leased to GVC II INC. was struck in the rear, and therefore, neither entity can bear liability for the accident. As such the action must be dismissed as to NYCTA and GVC II INC.

Plaintiff only opposes the portion of the motion to dismiss as to defendants NYCTA and GVC II INC. as premature and cross-move for leave to serve and file a Supplemental Summons and Amended Verified Complaint to add Shekh Monwar and Tanisha L. Delgado as party defendants replacing John Does 1-2.

Vehicle and Traffic Law §388, states, in pertinent part, that [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. (VTL § 388; see *Elrac v Ward*, 96 NY2d 58 [2003]). VTL § 128 defines an "Owner" as a person, other than a lien holder, having the property in or title to a vehicle, including any person entitled to the use and possession of a vehicle subject to a security interest in another person and includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

It is well settled law that the driver of an approaching vehicle must maintain a reasonably safe rate of speed and control over their vehicle, and use reasonable care to avoid colliding with a lead vehicle (*Denezzo v Joseph*, 95 AD3d 1060 [2d Dept 2012] [internal quotation marks omitted]), and a rear-end collision creates a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*Macauley v Elrac, Inc.*, 6 AD3d 584, 585 [2d Dept 2004]).

The Court finds that the Defendants, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN

TRANSPORTATION AUTHORITY established their prima facie entitlement to summary judgment by demonstrating that they did not own, operate, control, maintain, or otherwise manage the van involved in the accident and that they had no involvement with the subject accident (see *Farrulla v. Happy care Ambulette Inc.*, 125 A.D.3d 11, 12 [1st Dept 2015]; *McHale v Anthony*, 70 A.D.3d 463, 465 [1st Dept 2010] [summary judgment granted in defendant's favor where "there is no evidence that it either owned, leased or operated the offending truck, and the equities do not justify keeping it in the case"]); *Woods v. Craig*, 41 AD3d 1260, 1260 [4th Dept 2007] ["Defendants ... established their entitlement to judgment as a matter of law ... by establishing that ... [defendant] was not the owner or the operator of the vehicle that caused the accident"]). In addition, plaintiff has not opposed this portion of the motion. Thus, Defendants, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN TRANSPORTATION AUTHORITY's motion to dismiss is granted without opposition.

In support of the defendants NYCTA and GVC II INC. motion they annex the 50h transcript of the plaintiff who testified that while she was in the Access-A-Ride (AAR) vehicle they were hit in the rear and the affidavit of Shekh Monwar employee of the defendant GVC II INC. who was driving the AAR vehicle who also states the AAR vehicle was struck in the rear.

Plaintiff in opposition states the motion is premature as depositions have not been held and cross-moves to amend to add necessary parties. The Court finds that the motion is premature as the non-party proposed defendant Tanisha L. Delgado has not had an opportunity to rebut the inference of negligence as the rearmost vehicle.

Thus, the court denies this portion of the motion as premature.

Plaintiff's Cross-Motion

Leave to amend pleadings pursuant to CPLR §3025 (b) should be freely given upon such terms as may be just. The decision to disallow the amendment is at the Court's discretion (*Edenwald Contracting Co., Inc. v City of New York*, 60 NY2d 957 [1983]). The Court is required to determine if the proposed amendment is "palpably insufficient" or patently devoid of merit (*MBIA Ins. v Greystone & Co., Inc.*, 74 AD 3d 499 [1st Dept. 2010]). This Court finds that the proposed amended complaint in this case is not palpably insufficient or patently devoid of merit and there is no showing of any prejudice.

Accordingly, it is hereby

ORDERED, that defendants CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN TRANSPORTATION AUTHORITY's motion is granted, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment against plaintiff dismissing the complaint as against defendants, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY ACCESS A RIDE, and METROPOLITAN TRANSPORTATION AUTHORITY, it is further

ORDERED, that defendants NEW YORK CITY TRANSIT AUTHORITY and GVC II INC. motion is denied, it is further

ORDERED, that the plaintiff's cross-motion to amend is granted, it is further,

ORDERED, that the Summons and Verified Complaint are amended as stated below and deemed filed, and it is further,

ORDERED, that the caption of this action is amended, and the Clerk is directed to amend the caption of this action to read as follows:

-----X

JUANITA HILL,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY,
SHEKH MONWAR and TANISHA L. DELGADO,

Defendants.

-----X, it is further

ORDERED, that Plaintiff is to serve amended summons and complaint upon SHEKH MONWAR and TANISHA L. DELGADO, in accordance with the CPLR. Plaintiff shall also serve a copy of this decision upon the defendants and the Clerk of this Court, it is further

ORDERED, that Plaintiff is directed to serve a copy of this Order with Notice of Entry within twenty (20) days of entry of this Order, on all parties.

This constitutes the Decision and Order of this Court.

Dated: February 20, 2024

Hon. 

BIANKA PEREZ, J.S.C.