

Hargrove v St. John

2025 NY Slip Op 32704(U)

July 18, 2025

Supreme Court, New York County

Docket Number: Index No. 153646/2021

Judge: Richard Tsai

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI **PART** 21

Justice

-----X

LAURA HARGROVE,

Plaintiff,

- v -

WAYNE ST. JOHN, ACCESS-A-RIDE, NEW YORK CITY
TRANSIT AUTHORITY, and METROPOLITAN
TRANSPORTATION AUTHORITY,

Defendants.

-----X

INDEX NO. 153646/2021

MOTION DATE 07/14/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1, 46-58 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is **ORDERED** that the motion to dismiss the complaint by defendants Access-A-Ride, New York City Transit Authority, and Metropolitan Transportation Authority (collectively, the Transit Defendants) is **GRANTED TO THE EXTENT** the complaint is severed and dismissed as against defendant Metropolitan Transportation Authority; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant Metropolitan Transportation Authority, with costs and disbursements to this defendant as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion is otherwise denied, and the remainder of the action shall continue.

The complaint alleges that, on January 15, 2020, plaintiff was a passenger in a paratransit vehicle bearing plate BA9432 that was operated by defendant Wayne St. John, and the paratransit vehicle collided with a barrier on 11th Avenue, at the intersection of West 22nd Street in Manhattan, causing plaintiff injuries (see NYSCEF Doc. No. 1 [complaint ¶¶ 22, 42-44, 62]).

Pursuant to CPLR 3211 (a) (1) and (7), the Transit Defendants now move to dismiss the action on the grounds that defendant Metropolitan Transportation Authority (MTA) is not a proper party to this action, and that, as a lessor of the vehicle allegedly involved, defendant New York City Transit Authority (NYCTA) has no liability under the Graves Amendment. Lastly, they argue that defendant Access-A-Ride is not a legal entity. Plaintiff opposes the motion.

The Transit Defendants correctly point out that, “[i]t is well settled, as a matter of law, that the 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” (see *Delacruz v Metropolitan Transp. Auth.*, 45 AD3d 482, 483 [1st Dept 2007]; see also *Archer v New York City Tr. Auth.*, 187 AD3d 564 [1st Dept 2020]). Therefore, the complaint is severed and dismissed as against the MTA.

Turning to the issue of the applicability of the Graves Amendment, the Transit Defendants rely on an affidavit from Robin R. Cooper, the Deputy Director of the MTA Risk & Insurance Management Department for the MTA (see Transit Defendants’ Exhibit A in support of motion, aff of Robin R. Cooper [NYSCEF Doc. No. 48]). Cooper admits that the vehicle bearing plate #BA9432 was owned by the NYCTA, and avers that it was leased to MV Public Transportation, and driven by an employee of MV Public Transportation, Inc. (Cooper aff ¶ 4). The Transit Defendants also submit a copy of a lease agreement between the NYCTA and MV Public Transportation (see Transit Defendants’ Exhibit B in support of motion [NYSCEF Doc. No 49]).

Cooper’s affidavit, which was prepared for this motion, does not constitute documentary evidence that can be considered on a motion to dismiss pursuant to CPLR 3211 (a) (1) (*Bou v Llamaza*, 173 AD3d 575, 575 [1st Dept 2019]; see also *Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [“Factual affidavits, however, do not constitute documentary evidence within the meaning of the statute”]). Without Cooper’s affidavit, the Transit Defendants cannot establish that the vehicle allegedly involved was leased to MV Public Transportation. Although the lease agreement with MV Public Transportation refers to leased vehicles described in “Exhibit A” of the lease agreement, that exhibit was not submitted on this motion.

Even assuming, for the sake of argument, that Cooper’s affidavit could be considered as documentary evidence on a motion to dismiss under CPLR 3211 (a) (1), the Transit Defendants did not conclusively establish the Graves Amendment as a defense as a matter of law (*Cartagena v Volotsenko*, 232 AD3d 409, 410 [1st Dept 2024]).

“Pursuant to the Graves Amendment (49 USC § 30106), generally, the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle if: (1) the owner is engaged in the trade or business of renting or leasing motor vehicles, and (2) there is no negligence or criminal wrongdoing on the part of the owner” (*Olmann v Neil*, 132 AD3d 744, 745 [2d Dept 2015]).

Here, the NYCTA failed to establish that it was “engaged in the trade or business of renting and leasing motor vehicles” within the meaning of the Graves Amendment (see *Kelly v Prohaska*, 224 AD3d 1254 [4th Dept 2024]). The fact that the NYCTA leases vehicles to MV Public Transportation does not establish that the NYCTA is *in the trade or business* of renting and leasing vehicles to the general public. As plaintiff

points out, the NYCTA's business is the transportation of passengers for pay, via buses and subways. The Transit Defendants did not submit any documentary evidence that would establish what percentage of its overall business as a provider of public transportation services constitutes renting and leasing vehicles (see *Kelly*, 224 AD3d at 156).

Even assuming, for the sake of argument, that the Graves Amendment were to apply, "the owner is not afforded protection under the Graves Amendment if it fails to demonstrate that it did not negligently maintain the vehicle, or to prove that it was not responsible for the maintenance and repair of the vehicle during the lease" (*Muslar v Hall*, 214 AD3d 77, 82 [1st Dept 2023]). Cooper's affidavit (which cannot be considered on a motion to dismiss pursuant to CPLR 3211 [a] [1]) failed to address those issues.

The Transit Defendants' argument that Access-A-Ride is not a legal entity is based solely on Cooper's affidavit, which is an evidentiary submission that cannot be considered on a motion to dismiss pursuant to CPLR 3211 (a) (7), for failure to state a claim. *Rovello v Orofino Realty Co., Inc.* (40 NY2d 633 [1976]) held that evidence received on an unconverted motion to dismiss for failure to state a cause of action "[is] not to be examined for the purpose of determining whether there is evidentiary support for the pleading" (40 NY2d at 635). The Court of Appeals explained,

"If plaintiff chooses to stand on his pleading alone, confident that its allegations are sufficient to state all the necessary elements of a cognizable cause of action, he is at liberty to do so and, unless the motion to dismiss is converted by the court to a motion for summary judgment, *he will not be penalized because he has not made an evidentiary showing in support of his complaint*" (*id.* at 635 [emphasis supplied]).

The Court of Appeals emphasized that, "in instances in which a motion to dismiss made under CPLR 3211 (subd [a], par 7) is not converted to a summary judgment motion, affidavits *may be received for a limited purpose only, serving normally to remedy defects in the complaint*" (*id.* at 636; see *Miglino v Bally Total Fitness of Greater New York, Inc.*, 20 NY3d 342, 351 [2013]).

The Transit Defendants' reliance upon *Miello v City of New York* (2021 NY Slip Op 33013[U] [Sup Ct, Richmond County 2021]) is misplaced. There, the defendants moved for dismissal pursuant to CPLR 3211 and CPLR 3212. Here, the Transit Defendants are moving only under CPLR 3211 (a) (1) and (7). Had the Transit Defendants intended to move for summary judgment pursuant to CPLR 3212, they could have very easily done so in their notice of motion. It cannot be raised for the first time in reply (*Givoldi, Inc. v United Parcel Serv.*, 286 AD2d 220, 220 [1st Dept 2001]).

In any event, defendant St. John testified at his deposition that he was working for Access-A-Ride at the time of the accident (see plaintiff's Exhibit 1 in opposition, St.

John EBT at 20, lines 19-21 [NYSCEF Doc. No. 55]), which raises a question of fact as to whether Access-A-Ride was a legal entity that actually existed.



20250718174954RTSAI364625AF1BB4FF7AE8C815B74F003E6

7/18/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE