SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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NICHELLE WHITEHEAD,

Plaintiff,

- v -

CALVIN STEWART, SHAKWON SIMMS, CANDIDO CANALES, NEW YORK CITY TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY DIVISION OF PARATRANSIT, ACCESS-A-RIDE, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NEW YORK CITY TRANSIT PARATRANSIT DIVISION D/B/A ACCESS-A-RIDE, and QUANG LY,

Defendants.

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INDEX NO. 158840/2022

MOTION DATE 04/03/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 25-55 were read on this motion to/for JUDGMENT - SUMMARY.

In this action arising out of multi-vehicle collisions, defendant Quang Ly now moves for summary judgment dismissing the complaint as against Ly and all cross-claims, on the ground that Ly was rear-ended by a vehicle owned and operated by co-defendant Candido Canales. Plaintiff and Canales oppose the motion.

Defendants New York City Transit Authority, New York City Transit Authority Division Of Paratransit, Access-A-Ride, Metropolitan Transportation Authority, and MTA New York City Transit Paratransit Division D/B/A Access-A-Ride (collectively, the Transit Defendants) cross-move for summary judgment dismissing the complaint as against them, on the ground that they were neither the owner of the vehicle in which plaintiff was a passenger, nor the employer of any of the drivers involved. Plaintiff opposes the cross-motion.

This decision address both Ly's motion and the Transit Defendants' cross-motion.

BACKGROUND

In an affidavit, defendant Quang Ly avers that, on December 6, 2021, he was a taxi driver of a 2018 Nissan bearing NY license plate number T77683C, and plaintiff was a passenger in Ly's vehicle (*see* Exhibit B in support of Ly's motion, Ly aff ¶¶ 1-2 [NYSCEF Doc. No. 29]). According to Ly, he was driving in the left lane of the southbound FDR Drive within the speed limit, when a vehicle owned and operated by defendant Candido Canales "hit my vehicle in the rear" (*id.* ¶¶ 2-3). Ly maintains that

he did not stop short, suddenly stop, make any sudden lane changes, nor suddenly accelerate or decelerate (*id.* ¶ 4).

According to a certified police accident report, defendant Calvin Stewart is identified as the driver of "Vehicle 1"; Candido Canales is identified as the driver and owner of "Vehicle 2"; and Quang Ly is identified as the driver and owner of "Vehicle 3" The police accident report states, in relevant part:

> "AT TPO MV2 OP [Canales] STATES THAT HE WAS TRAVELING SB IN THE FAR RIGHT LANE OF THE FDR DRIVE AND WAS MERGING LEFT INTO THE CENTER LANE WHEN HE STRUCK MV 1 OP [Stewart]. MV 1 OP STATES HE WAS TRAVELING SB IN THE MIDDLE LANE OF THE FDR WHEN HE WAS STRUCK BY MV 2 OP WHO WAS CHANGING LANES FROM THE RIGHT TO THE MIDDLE. MV1 OP SUBSEQUENTLY STRUCK MV 3 OP [Ly] WHO WAS IN THE LEFT LANE" (*see* Ex 3 in support of Ly's motion [NYSCEF Doc. No. 30]).

The police accident report indicated plaintiff was in Vehicle 3, Ly's vehicle.

At her statutory hearing, plaintiff testified that, on December 6, she was in an SUV-type vehicle that came from the Access-A-Ride service (plaintiff's hearing tr at 13, lines 12-16 [NYSCEF Doc. No. 35]). Plaintiff stated that the Access-A-Ride vehicle was on the FDR Drive (*id.* at 20, lines 7-11), and there was an impact to the rear right side of the Access-A-Ride vehicle (*id.* at 22, line 21 through 23, line 4). According to plaintiff, the vehicle that she was in was in the "left lane, merging into the middle" when the accident occurred (*id.* at 60, lines 16-19).

DISCUSSION

> "To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party" (*Nellenback v Madison County*, —NY3d—2025 NY Slip Op 02263 [2025] [internal citations omitted]).

I. Ly's Motion for Summary Judgment

Ly has met the prima facie burden for summary judgment based on his affidavit. "A rear-end collision with another vehicle establishes a prima facie case of negligence on the part of the operator of the second vehicle" (*Callahan v Haji*, 189 AD3d 610, 610 [1st Dept 2020]), while the driver of the lead vehicle is presumed not negligent (*Giap v Pham*, 159 AD3d 484, 485 [1st Dept 2018]; *see also Soto-Maroquin v Mellet*, 63 AD3d 449, 450 [1st Dept 2009]).

In opposition, plaintiff argues that, based on her statutory hearing testimony, Ly was making a lane change from the left lane to the center lane when the collision occurred, raising an issue of fact as to whether Ly had cut off Candido's vehicle (affirmation of plaintiff's counsel in opposition ¶ 4 [NYSCEF Doc. No. 33]). Plaintiff also argues that summary judgment is premature. Canales adopts and incorporates plaintiff's arguments (*see* affirmation of Canales's counsel in opposition ¶ 2 [NYSCEF Doc. No. 50]).

In reply, Ly argues that the statutory hearing testimony fails to create an issue of fact sufficient to defeat summary judgment, because it is unsworn and unsigned (reply affirmation of Ly's counsel ¶ 4 [NYSCEF Doc. No. 36]).

Summary judgment is not premature, because any explanation for why Ly's vehicle was rear-ended was already present within the personal knowledge of the other drivers, Canales and Schwartz (*see Stephenson v New York City Tr. Auth*., 226 AD3d 546 [1st Dept 2024]; *Ahmad v Behal*, 221 AD3d 558, 559 [1st Dept 2023]).

Plaintiff fails to raise a triable of fact warranting denial of summary judgment in Ly's favor. Plaintiff's statutory hearing testimony, which was neither certified by a stenographer nor sworn to by plaintiff, is inadmissible hearsay.[1] In any event, "[w]hile hearsay statements may be offered in opposition to a motion for summary judgment, hearsay statements cannot defeat summary judgment 'where it is the only evidence upon which the opposition to summary judgment is predicated'" (*Garcia v 122-130 E. 23rd St. LLC*, 220 AD3d 463, 464 [1st Dept 2023] [citations omitted]). As Ly points out, plaintiff herself did not submit any affidavit in opposition to Ly's motion, and there is no affidavit from any other driver or witness to corroborate that Ly was rear-ended while Ly was in the midst of a lane change.

Therefore, Ly's motion for summary judgment is granted, and the complaint is severed and dismissed as against defendant Ly.

Because Ly can no longer be held liable to plaintiff, the cross-claims against Ly of the Transit Defendants, Canales, and Stewart, for common-law indemnification and/or contribution, are dismissed by operation of law (*see e.g. Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross claims against that defendant are also dismissed]). Ly's own cross-claims for common-law indemnification and contribution against the other co-defendants are also dismissed as academic (*Rogers v Rockefeller Group Intl., Inc*., 38 AD3d 747, 750 [2d Dept 2007]).

[1] Although not raised by Li, the statutory hearing transcript would also be inadmissible against Ly because Ly was not present at plaintiff's statutory hearing (*Claypool v City of New York*, 267 AD2d 33, 35 [1st Dept 1999]).

II. The Transit Defendants' Cross-Motion for Summary Judgment

The Transit Defendants argue that they are not liable because Ly is the registered owner of the vehicle, based on certified records from the New York State Department of Motor Vehicles (affirmation of Transit Defendants' counsel in support of motion ¶¶ 14-22 [NYSCEF Doc. No. 39]). Additionally, they assert that Ly was not their employee, based on an affidavit from Benoit Dupuy, the General Superintendent at the New York City Transit Authority (NYCTA) (*id.* ¶ 24). According to Dupuy, Ly "was never affiliated, contracted, retained by, or provided transportation services for NYCTA or ACCESS [Access-A-Ride]" (Dupuy aff ¶ 9 [NYSCEF Doc. No. 42]).

In opposition, plaintiff asserts that Ly's vehicle was an Access-A-Ride vehicle. According to plaintiff, she is a beneficiary of the Access-A-Ride program since 2015, and that, on the day before the accident, she had called the NYCTA/MTA to schedule transportation for the following day (*see* plaintiff's Exhibit B in opposition to cross-motion, plaintiff's aff ¶¶ 5, 7 [NYSCEF Doc. No. 55]). Plaintiff avers that the vehicle which picked her up "had a sign hanging from one of the passenger side windows containing the words "MTA New York City Paratransit" (*id.* ¶ 9).

As the Transit Defendants correctly point out, they cannot be held vicariously liable for the motor collision under Vehicle and Traffic Law § 388, because the unrefuted evidence establishes that they were not owners of the vehicle operated by defendant Ly. The DMV records indicate that Ly's vehicle was registered to Ly (*see* Exhibit A in support of the Transit Defendants' motion [NYSCEF Doc. No. 41]). Plaintiff fails to raise a triable issue of fact as to whether the Transit Defendants were the owners of that vehicle.

Thus, so much of the complaint that alleges that the Transit Defendants are liable by reason of their alleged ownership of the vehicle is dismissed.

However, the analysis does not end there. The Transit Defendants' liability was not solely premised on their alleged ownership and operation of the vehicle, but rather also based on the NYCTA's role as a provider of paratransit services.

Whether the Transit Defendants can be granted, as a matter of law, summary judgment dismissing the complaint based on the NYCTA's role as the administrator of the Access-A-Ride program is premature. Dupuy states, in relevant part, "ACCESS-A-RIDE ("ACCESS") is a Paratransit Service administered by Defendant NYCTA which 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 service" (Dupuy aff ¶ 3 [NYSCEF Doc. No. 42]).[2]

[2] The contentions of the Transit Defendants' counsel about the operation of the Access-A-Ride program (*see* affirmation of the Transit Defendants' counsel in support of motion ¶ 21 [NYSCEF Doc. No. 23) have no evidentiary value, as they do not purport to be based on personal

Generally speaking,

> "'a principal is not liable for the acts of an independent contractor because, unlike the master-servant relationship, principals cannot control the manner in which independent contractors perform their work. There are exceptions to this rule. A principal can be held vicariously liable for the acts of an independent contractor if '[it] is negligent in selecting, instructing or supervising the independent contractor; where the independent contractor is hired to do work which is 'inherently dangerous'; and where the [principal] bears a specific, non-delegable duty'" (*Adams v Hilton Hotels, Inc*., 13 AD3d 175, 177 [1st Dept 2004] [internal citations omitted]).

On the record before this court, the Transit Defendants' submissions were insufficient for this court to determine, as a matter of law, whether the NYCTA could owe a duty of care to plaintiff as an Access-A-Ride user solely in its capacity as an administrator of the Access-A-Ride program, or if the NYCTA fell within the exceptions discussed above.

There are apparently no reported New York appellate decisions on the issue,[3] and this court would welcome the guidance of appellate courts. As plaintiff points out, lower courts similarly ruled, "more information is needed about the Access-A-Ride program, the role of defendants in the Access-A-Ride program, if any, and the regulatory framework that governs such paratransit services" (*Roberts v New York City Tr. Auth.*, 2017 WL 1952630 [Sup Ct, Queens County 2017]; *Staples v New York City Tr. Auth*., 2020 WL 4391650 [Sup Ct, NY County 2020] [citing *Roberts*]).

In this court's view, much more information is needed about the Access-A-Ride program, the Transit Defendants' roles, if any, in Access-A-Ride program, and the relationship, if any, to the participating Access-A-Ride vendors to decide, as a matter of law, the issue of the NYCTA's purported liability as administrator of the Access-A-Ride program.

Moreover, as plaintiff points out, because the Transit Defendants have not been deposed, and the information about the operation of the Access-A-Ride program is exclusively within the knowledge or control of the Transit Defendants, this court concludes that summary judgment dismissing the complaint in its entirety against the

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knowledge of the facts (*New York Community Bank v Bank of Am., N.A*., 169 AD3d 35, 38 [1st Dept 2019]).

[3] In *Waluyn v Access-A-Ride* (229 AD3d 838, 840 [2d Dept 2024]), the Appellate Division, Second Department affirmed denial of a motion to dismiss the complaint as against, among others, the NYCTA, reasoning that the allegations of an employer-employee and/or principal-agency relationship between the NYCTA and the owner and operator of the vehicle were sufficient to survive a prediscovery motion to dismiss.

Transit Defendants at this stage would be premature (CPLR 3212 [f]; *see Curry v Hundreds of Hats, Inc.*, 146 AD3d 593, 594 [1st Dept 2017] [plaintiff, a background actress, was entitled to complete discovery in her effort to establish the precise relationships among the various entities and their relationships to the director and producer of the movie]).

CONCLUSION & ORDER

Accordingly, it is hereby **ORDERED** that the motion for summary judgment by defendant Quan Ly is **GRANTED**, the complaint is severed and dismissed as against defendant Ly, and all cross-claims by and against defendant Quan Ly are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in defendant Quan Ly's favor, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the cross-motion for summary judgment by defendants New York City Transit Authority, Metropolitan Transportation Authority, New York City Transit Authority s/h/a New York City Transit Authority Division Of Paratransit, New York City Transit Authority s/h/a Access-A-Ride, and Metropolitan Transportation Authority s/h/a MTA New York City Transit Paratransit Division D/B/A Access-A-Ride is **GRANTED IN PART TO THE EXTENT THAT** summary judgment is granted dismissing so much of the complaint that alleges negligence based on ownership of the motor vehicle in which plaintiff was a passenger, and the cross-motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear for an in-person preliminary conference on **October 23, 2025** at **2:15 p.m**., in IAS Part 21, 80 Centre Street Room 280, New York, New York.

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7/30/2025
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**		
MOTION	**X**	**GRANTED**		**DENIED**		**GRANTED IN PART**		**OTHER**
CROSS-MOTION		**GRANTED**		**DENIED**	**X**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**