

Brown v Westchester County of N.Y.
2025 NY Slip Op 35518(U)
March 12, 2025
Supreme Court, Westchester County
Docket Number: Index No. 71911/2023
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

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DECISION AND ORDER

LAUREEN BROWN,

Plaintiff(s)

-against-

Index No. 71911/2023

Motion Sequence No. 2

THE WESTCHESTER COUNTY OF NEW YORK,
THE WESTCHESTER COUNTY ATTORNEY,
LIBERTY TRANSIT INC, MARIAM MERO,
JOHN DOE AND JANE DOE,

Defendant(s).

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The following papers filed to the New York State Court Electronic Filing System (NYSCEF) as NYSCEF Doc. 51-57 were read and considered on Plaintiff's motion to amend the complaint to add two additional causes of action, compel certain discovery (depositions), and related relief.

Upon the foregoing papers, the motion is determined as follows:

Plaintiff commenced this personal injury action by filing pleadings on October 18, 2023 asserting the following allegations:¹

"On or about March 1, 2023, at about 12:35 pm, Plaintiff had just got on the Bus but, without allowing plaintiff sufficient time to sit down the Bus Driver, Jane Doe, sped up and jolted the Bus so fast that Plaintiff was violently thrust back and forth and, upon instant alarm raised, Jane Doe applied the break and stopped so suddenly that Plaintiff fell backwards, hitting her back and shoulder so violently against the metal bar located behind the back door of the Bus. Plaintiff fell to the floor, writhing with so much pain, up until Jane Doe or her companion called the Ambulance that eventually took Plaintiff away to the nearby Mount Vernon Hospital and another Bus of the County was called in to transfer the passengers,"² said incident having resulted in bodily injuries sustained by Plaintiff.

¹ NYSCEF Doc. 1-2.

² NYSCEF Doc. 2, Verified Complaint ¶¶7-8.

The County Defendants interposed an answer on November 27, 2023 asserting, inter alia, general denials and nine affirmative defenses.³ The prior Decision and Order filed on June 5, 2025 granted Plaintiff's motion for leave to serve an Amended Complaint which specifically named the bus operator, MARIAM NERO as a defendant in this matter.⁴

This matter has been the subject of court conferences related to the progression of discovery. At the last conference held on November 15, 2024, counsel for the parties reported that the following discovery remained outstanding: (1) possible deposition of non-party witness testimony of Patrick Scully (safety officer who trained the driver) by December 31, 2024; (2) IME report to be exchanged; and (3) based on the foregoing status of discovery reported by counsel, the Court directed that "[a] trial readiness order shall be issued at the next conference."⁵

Plaintiff's Motion:

Subsequent to the November 2024 court conference, Plaintiff filed the instant motion by Notice of Motion requesting the following relief:

1. "Directing the Defendants to produce to [MARIAM MERO] for examination and inspection records of the two accidents which Defendant had had prior to the accident of 3/1/23 resulting in this action.
2. Recalling Defendant Mero to testify and be examined on the two accidents which she had prior to the subject accident of 3/1/23 resulting in this action.
3. [F]urther amending the Summons and Complaint in this action by adding the third and fourth causes of action to the Complaint, and
4. [D]eeming the Proposed Third Amended Complaint, annexed hereto as Exhibit 4 and served along with this motion papers, as properly served, and for such other or further orders as the Court would deem fit and expedient to make in the circumstances."⁶

Counsel states that Defendants' bus driver (MARIAM MERO) testified at her deposition that following the subject incident, her employer gave her a remedial training, and Plaintiff consequently made a post-EBT discovery demand for documents regarding said training. The responsive documents produced by the Defendants disclosed, for the first time, the character and nature of the remediation training given to Defendant Mero by Liberty Transit Inc., and the Plaintiff subpoenaed said training record. Counsel further states that "the deposition testimonies of both Defendant Mero and of the subpoenaed witness, Patrick Scully, revealed that sequel to the subject accident, Defendant Mero was given only a few hours of remedial training, after which she was asked to go back to the road to resume her Bus Operation."⁷

³ NYSCEF Doc. 3.

⁴ NYSCEF Doc. 38.

⁵ NYSCEF Doc. 48.

⁶ NYSCEF Doc. 51.

⁷ NYSCEF Doc. 52, Plaintiff's Attorney Aff. ¶6.

It is Plaintiff's position that Patrick Scully's testimony demonstrates that remedial training provided by their supervision at Liberty Line consisting of only eight hours was inadequate and noting Defendant Mero's record of two accidents within a period of six months, and a third one shortly afterwards. Accordingly, Plaintiff's instant motion requests (1) production of records relating to alleged prior motor vehicle accidents, (2) further testimony from bus operator MARIAM MERO, and (3) further amending the Summons and Complaint to add causes of action asserting (a) Negligent Hiring and Retention of Employment Services and (b) Municipal Liability under 42 USC § 1983 claims.

County Defendants' Opposition:

Counsel for the County Defendants filed opposition to Plaintiff's motion. First, counsel contends that Plaintiff's request for county records related to MERO's three unrelated accidents constitutes character or propensity evidence which is barred. Second, counsel contends that Plaintiff's proposed additional cause of action for negligence hiring and retention is barred against municipal entities. Specifically, counsel stated that insofar as Defendant MERO admits the bus operator was acting within the scope of their employment, no claim may proceed against the employer for negligent retention. Third, counsel stated that plaintiff has not properly pled their proposed constitutional causes of action under 42 USC § 1983. Fourth, counsel argues that Plaintiff failed to question the defendant-bus driver MERO and such failure does not give rise to Plaintiff having another opportunity to further depose MERO.

All other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Upon due consideration of the motion record, and all arguments raised therein, it is hereby

ORDERED THAT PLAINTIFF'S MOTION IS DENIED IN ITS ENTIRETY FOR THE FOREGOING REASONS.

It is well-settled that "[l]eave to amend pleadings should be freely given provided that the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit." (*Frumento v. On Rite Co., Inc.*, 66 A.D.3d 828 [2d Dept. 2009]; *see also* CPLR §3025). As it relates to matters that are subject to disclosure during the discovery phase of litigation, CPLR §3101[a] provides that "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof."

"Generally, where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under a theory of respondeat

superior, and a plaintiff may not proceed with a cause of action to recover damages for negligent hiring and retention” (*Trotman v New York City Transit Authority*, 168 A.D.3d 1116 [2d Dept. 2019], quoting *Tangalin v. MTA Long Is. Bus.*, 92 A.D.3d 766, 767[2d Dept. 2012]; *see also*, *Rrengo v New York City Transit Authority*, 204 AD3d 1049 [2d Dept 2022]). Accordingly, where, as here, it is conceded that bus driver MERO was an employee acting within the scope of her duties and employment, Plaintiff need not assert a separate cause of action to recover damages for negligent hiring and retention and, consequently, Plaintiff’s request for records related thereto (including such records of prior acts of alleged carelessness or incompetence) are not discoverable (*Trotman v New York City Transit Authority*, 168 A.D.3d 1116 [2d Dept. 2019], citing *Cheng Feng Fong v. New York City Tr. Auth.*, 83 A.D.3d 642, 643 [2d Dept. 2011]; *Neiger v. City of New York*, 72 A.D.3d 663, 664 [2d Dept. 2010]). Furthermore, this Court finds that Plaintiff failed to sufficiently assert any other basis to justify granting Plaintiff’s request for such records related to any prior similar incidents, noting “any prior acts of carelessness or incompetence of the defendant’s employee would not be admissible at trial” (*Trotman v New York City Transit Authority*, 168 A.D.3d at 1117, quoting *Stevens v. Metropolitan Suburban Bus Auth.*, 117 A.D.2d 733, 733 [2d Dept. 10986]). Therefore, the additional discovery sought by the plaintiff is not relevant or reasonably calculated to lead to evidence relevant to the issue of the bus driver’s alleged negligence (*Trotman v New York City Transit Authority*, *supra.*).

Lastly, Plaintiff failed to assert a cognizable cause of action for municipal liability under 24 USC §1983. Plaintiff’s request to assert such a claim for constitutional violation(s) is not supported by the motion record nor prevailing law, and is devoid of merit. (*See generally*, *Eckardt v City of White Plains*, 87 A.D.3d 1049 [2d Dept. 2011])[setting forth the essential elements for a 42 USC § 1983 claims].

ORDERED that, Judge’s Court Clerk will issue a separate court notice scheduling a virtual compliance conference using Microsoft Teams. Counsel are advised to review the last compliance conference order dated November 15, 2024 (*see*, NYSCEF Doc. 48) to report on the status of completion of the remaining discovery stated therein and trial readiness.

The foregoing constitutes the Decision and Order of this Court.

Dated: March 12, 2025
White Plains, New York

E N T E R :



HON. THOMAS QUIÑONES, J.S.C.

TO: Filed to NYSCEF