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| <b>Williams v MTA Bus Co.</b>  |
| 2017 NY Slip Op 30718(U)   |
| April 13, 2017   |
| Supreme Court, New York County   |
| Docket Number: 158054/2013   |
| Judge: Lynn R. Kotler  |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 21

-----X  
ROSALIND WILLIAMS

Plaintiff(s),

-against-

MTA BUS COMPANY *et al.*,

Defendant(s).  
-----X

**DECISION/ORDER**

INDEX NO.: 158054/2013

Present:

Hon. Lynn R. Kotler, JSC

*Kotler, J.*

This is a personal injury action. In her notice of claim, plaintiff alleges that she was injured while a passenger on a bus owned/operated by the defendants on July 19, 2012, at 11:49 am at or near 23rd Street, New York when said bus rear ended another automobile.

In motion sequence number 006, defendant The City of New York (the "City") moves to renew and reargue their prior motion for summary judgment, which was motion sequence number 002. Motion sequence number 006 was returnable September 26, 2014. In a decision/order dated June 23, 2014 (the "prior decision/order"), the Honorable Michael Stallman denied the City's motion for summary judgment because "[t]he City has not demonstrated, as a matter of law, that the City did not own the "M7 Express bus" at issue." Judge Stallman is unavailable, therefore this motion is presently before this court. The court's decision follows.

Procedural History

Given the labyrinthine nature of the procedural history of motion sequence number 006, the court will summarize it herein. In an order dated January 15, 2015, Judge Stallman adjourned the motion to July 16, 2015 "to allow plaintiff time to find new counsel."

According to an order dated July 17, 2015, Judge Stallman held a conference call and

because “plaintiff [] represented that she was not able to appear in court on July 16, 2015 for medical reasons,” the court adjourned the motion to December 15, 2015. Judge Stallman indicated in the 7/17/15 order that “[a]ny further applications for adjournment by plaintiff on medical grounds must be evidenced by an affidavit from a health care provider explaining why plaintiff is unable to physically come to court.”

The next order in the court’s file is dated September 30, 2016. In that order, Judge Stallman adjourned a compliance and motion conference “to enable plaintiff to obtain counsel and to serve her answering papers” and further ordered that “in the event [] plaintiff is unable to obtain new counsel, she is allowed to appear by telephone in light of her medical condition.”

Thereafter, Judge Stallman sought a guardian *ad litem* to represent the plaintiff, as memorialized in an interim order dated December 8, 2016. The motion was adjourned to February 16, 2017 at 12pm for plaintiff to appear by telephone for a conference and all other parties were to appear in person.

In an order dated December 21, 2016, Judge Stallman appointed Mary A. Callaghan, Esq., as guardian *ad litem* “in light of plaintiff’s legal blindness and other medical conditions which have rendered her homebound and unable to appear in court in person.” Judge Stallman further noted that “plaintiff appears to be unable to prepare responsive papers on her own to the pending motion for renewal of a motion for summary judgment (Seq. 006).” Judge Stallman conditioned Attorney Callaghan’s appointment upon her submission of a written consent to serve “with an affidavit stating facts showing [her] ability to answer for any damage sustained by [her] negligence or misconduct. The Guardian *ad litem*’s consent and affidavit should be submitted to Justice Kotler and e-filed without delay. Ms. Callaghan shall also file her notice of appearance and register for e-filing on this case.”

On February 16, 2017, plaintiff did not appear either in person or via telephone. Attorney Callaghan did not appear either, nor did Attorney Callaghan file any of the paperwork called for in Judge Stallman's 12/21/16 decision/order. The court therefore adjourned the conference to March 16, 2017 at 10:00 am, directing plaintiff to appear in person at that time. In that order, the court warned that "[p]laintiff's failure to appear on the adjourned date may result in the dismissal of the complaint..."

On March 16, 2017, plaintiff did not appear in person or via telephone. Attorney Callaghan did appear, but acknowledged that she did not file any of the conditional documents required for her appointment as guardian *ad litem* for plaintiff by Judge Stallman, nor did she register for e-filing. Ms. Callaghan did, however, file a notice of appearance with the court which is dated March 16, 2017. Also on March 16, 2017, the court marked motion sequence number 006 submitted.

Since Attorney Callaghan has not complied with the directives in Judge Stallman's 12/21/15 decision/order, Attorney Callaghan's conditional appointment as guardian *ad litem* for plaintiff is rescinded. Therefore, plaintiff remains self-represented. Although she is self-represented, plaintiff has had ample time to retain an attorney or proceed *pro se* and submit opposition to the motion.

While the court is mindful of plaintiff's medical condition as noted by Judge Stallman, which this court does not know the full details of since there is no affidavit by a medical professional or other supporting documentation in the court's file, all parties must follow the court rules. These rules include appearing for conferences and timely submitting opposition to the underlying motion as was directed in several prior court orders. Therefore, motion sequence number 006 is now considered by this court without opposition.

The prior decision/order

In his decision/order dated June 23, 2014, Judge Stallman held as follows: [1] with respect to motion sequence number 001, he severed and dismissed the complaint as against MTA Bus Company and converted the City's cross-claim against the MTA Bus Company to a third-party claim; [2] with respect to motion sequence number 002, he denied the City's motion for summary judgment; [3] with respect to motion sequence number 003, Judge Stallman granted the motion to the extent of severing and dismissing the complaint and cross-claims as against defendant Metropolitan Transportation Authority and otherwise denied the motion.

The only issue that the City seeks to reargue is the denial of its own motion for summary judgment. In the prior decision/order, Judge Stallman denied the City's motion which was based upon the argument that it did not own the M7 Express bus upon which plaintiff was allegedly injured. The City previously advanced the affidavit of Tajinder Jassal, the Director of the Bus Stop Management Unit of the City's Department of Transportation. Mr. Jassal stated in that affidavit that the M7 Bus Line is part of the Metropolitan Transit Authority Bus Company. Judge Stallman took judicial notice of the NYS Secretary of State's records which indicated at that time that there is no such corporation named the "Metropolitan Transit Authority Bus Company". Further, Judge Stallman held that it was a disputed issue of fact as to whether MTA Bus Company owns the bus since MTA Bus Company denied ownership of the bus in its answer.

The City's motion to reargue/renew

The City now argues that there are new facts and that Judge Stallman overlooked or misapprehended relevant facts. Specifically, the City requests that the court take judicial notice of a BxM7 brochure/bus map. The City argues that plaintiff was a passenger on the Express M7 bus line, rather than the regular M7 bus line as indicated in plaintiff's bill of particulars. The

City's claim is based upon the path that the subject bus took as described in the bill of particulars plaintiff served on co-defendants Manhattan and Bronx Surface Transit Authority, Metropolitan Transit Authority and New York City Transit Authority. The City explains that it was not in possession of the co-defendants bill of particulars at the time it made the original motion.

The City has submitted an updated affidavit by Mr. Jassal, attesting to the fact that the City does not own or operate the M7 Express bus line.

### **Discussion**

A motion to reargue is addressed to the court's discretion, and permission to reargue will only be granted if the court believes some error has been made (see CPLR § 2221[d][2]). In order to succeed on a motion for reargument, the movant must demonstrate that the Court overlooked or misapprehended the law or facts when it decided the original motion (*Foley v. Roche*, 68 AD2d 558 [1st Dept 1979]). A motion to reargue is not designed to provide an unsuccessful party with another opportunity to re-litigate the same issues previously decided against him or her (*Pro Brokerage, Inc. v. Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]).

The court grants reargument for the following reasons. Movant has demonstrated that the court previously overlooked the fact that the City demonstrated *prima facie* entitlement to judgment as a matter of law. The City came forward with proof that it did not own the bus at issue. Since the City did not own the bus that plaintiff was on when she sustained her injuries, the City did not have a duty to maintain or control the bus and therefore cannot be held liable under a theory of negligence. Accordingly, upon reargument, the court vacates that portion of the prior decision/order which denied motion sequence number 002 and hereby grants the City's motion for summary judgment, dismissing the claims and cross-claims against it.

### Remaining issues

Plaintiff's claims against MTA Bus Company and Metropolitan Transportation Authority were previously dismissed. Therefore, the sole remaining defendants are New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority.

A preliminary conference has yet to be held in this matter. Therefore, the court directs the parties to appear for a preliminary conference on August 17, 2017 at noon at 80 Centre Street, Room 278. All parties are directed to appear in person. If plaintiff cannot appear in person due to a medical condition, she is directed to move by order to show cause for permission from this court to appear via telephone. Along with that order to show cause, plaintiff must file an affidavit from a medical professional attesting to her medical condition and demonstrating that she is unable to appear in court in person and the length of time plaintiff will be unable to appear in court in person. The court has a Help Center for Unrepresented Persons which is located at 60 Centre Street Room 116 and the telephone number for that office is 646-386-3025.

Plaintiff's failure to appear in person on August 17, 2017 or file an order to show cause for permission to appear via telephone prior to that date may result in the automatic dismissal of this action due to plaintiff's failure to appear.

### **CONCLUSION**

In accordance herewith, it is hereby:

**ORDERED** that the motion by the City of New York to renew/reargue the decision/order by Judge Stallman dated June 23, 2014 is granted to the extent that the court grants reargument, and upon reargument, the court vacates that portion of the June 23, 2014 decision/order which denied motion sequence number 002, and upon vacatur, grants the City's prior motion for summary judgment dismissing the complaint and all cross-claims against it; and it is further

**ORDERED** that Judge Stallman's 12/21/16 order appointing Mary A. Callaghan, Esq. as guardian *ad litem* subject to certain conditions specified therein is rescinded since Attorney Callaghan did not comply with the subject conditions; and it is further

**ORDERED** that the parties are directed to appear for a preliminary conference on **August 17, 2017** at **12pm** at 80 Centre Street, Room 278. All parties, including plaintiff, are directed to appear in person. If plaintiff cannot appear in person due to a medical condition, she is directed to move by order to show cause for permission from this court to appear via telephone. Along with that order to show cause, plaintiff must file an affidavit from a medical professional attesting to her medical condition and demonstrating that she is unable to appear in court in person, further specifying the length of time plaintiff will be unable to appear in court in person. The court has a Help Center for Unrepresented Persons which is located at 60 Centre Street Room 116 and the telephone number for that office is 646-386-3025.

Plaintiff's failure to appear in person on August 17, 2017 or file an order to show cause for permission to appear via telephone prior to that date may result in the automatic dismissal of this action due to plaintiff's failure to appear.

Any requested relief not expressly addressed herein has nonetheless been considered and this constitutes the decision and order of the court.

Dated: New York, New York

4/13/17

So Ordered:



HON. LYNN R. KOTLER, J.S.C.