

Mingo v Bravflo Corp.
2018 NY Slip Op 30440(U)
March 8, 2018
Supreme Court, New York County
Docket Number: 151247/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

-----X

ZINA MINGO,
Plaintiff,

INDEX NO. 151247/2016

- v -

BRAVFLO CORP., MAMADOU DAO, GVC II INC., FELIBERTO
QUINONES, METROPOLITAN TRANSIT AUTHORITY, NEW
YORK CITY TRANSIT AUTHORITY-ACCESS-A-RIDE

MOTION SEQ. NO. 001 & 003

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 54

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for

CONSOLIDATE/JOIN FOR TRIAL

In this action to recover for personal injuries from a motor vehicle accident, defendants GVC II, Inc., Feliberto Quinones, Metropolitan Transit Authority and New York City Transit Authority-Access-A-Ride (hereinafter collectively referred to as “the Access-A-Ride defendants”) move for summary judgment dismissing the complaint and cross claims against them. (Motion Seq. No. 001.) Plaintiff cross-moves for summary judgment in her favor on the issue of liability against defendants Bravflo Corp. and Mamadou Dao (hereinafter collectively referred to as “the taxi defendants”). The taxi defendants oppose both the motion and cross motion.

The taxi defendants also move to consolidate this action with one pending in Supreme Court, Bronx County, entitled *Quinones v Bravflo Corp.* and bearing index No. 20677/2017E. (Motion Seq. No. 003.) That motion is unopposed.

Both the above-captioned action and the one pending in Bronx County concern the same motor vehicle accident that occurred on September 16, 2015 on Adam Clayton Powell Boulevard between 135th and 136th Streets in Manhattan. Plaintiff testified at her 50-h hearing that she was the passenger in a green taxi driven by Dao. (Doc. No. 21.) She stated that the taxi struck an Access-A-Ride vehicle in front of it, which was stationary at the time. Quinones submits an affidavit in which he states that he was the driver of an Access-A-Ride vehicle. He avers that he was stopped at a traffic light and, when it turned green, he “began to move [his] vehicle,” at which point the taxi behind him “contacted the rear of the vehicle [he] was operating.” (Doc. No. 22.)

First, both the above-captioned action and the action pending in Bronx County arise from the same set of facts, so consolidation would serve the interests of justice and judicial economy. (See *DLJ Mtge. Capital, Inc. v Kontogiannis*, 110 AD3d 522, 523 [1st Dept 2013]; *Murphy v 317-319 Second Realty LLC*, 95 AD3d 443 [1st Dept 2012].)

With respect to the substantive motions, the movant on a motion for summary judgment must satisfy its initial burden to “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,” after which the burden shifts to the opposing party “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] ; see *Schmidt v One N.Y. Plaza Co. LLC*, 153 AD3d 427, 428 [1st Dept 2017]; *Bartolacci-Meir v Sassoon*, 149 AD3d 567, 570 [1st Dept 2017].). Plaintiff and the Access-A-Ride defendants’ submissions implicate the well settled principle that “a rear-end collision with a stopped vehicle creates a presumption that the operator of the moving vehicle was negligent” and thus, upon a shifting of the burden to

the taxi defendants, summary judgment must be granted “unless the driver of the moving vehicle provides a non-negligent explanation for the collision.” (*Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept 2001]; see *Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]; *Corrigan v Porter Cab Corp.*, 101 AD3d 471, 471 [1st Dept 2012].)

The taxi defendants’ argument that summary judgment should not be granted because they have been unable to locate Dao, the driver of the taxi, is without merit. Initially, the taxi defendants have not alerted this Court of any law to support their position that the inability to locate their own client is a proper reason to deny summary judgment. Further, the proof of their efforts to locate Dao consists of a single email to the purported investigator, which reads: “Jim: Please contact our driver to confirm or deny a rear-ending. Thanks.” The taxi defendants have failed to raise a question of fact as to liability. (*Cf. Silverio v Arvelo*, 103 AD3d 401 [1st Dept 2013]; *Hann v Black*, 96 AD3d 1503, 1505 [4th Dept 2012]; *Mason v MTA N.Y. City Tr.*, 38 AD3d 258 [1st Dept 2007]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170, 171 [1st Dept 2004].)

Finally, since Quinones’s complaint against the taxi defendants is now consolidated with the above-captioned action, this Court is able to make a determination as to liability on his claims. Upon searching the record, Quinones is awarded summary judgment in his favor on the issue of liability against the taxi defendants. (*See CPLR 3212 [b]*; *Morris v Pavarini Const.*, 22 NY3d 668, 675 [2014]; *Blanco v NBC Trust No. 1996A*, 122 AD3d 409, 409-410 [1st Dept 2014]; *Mini Mint Inc. v Citigroup, Inc.*, 83 AD3d 596, 597 [1st Dept 2011].)

Accordingly, it is hereby:

ORDERED that the Access-A-Ride defendants' motion for summary judgment dismissing the complaint against them, and plaintiff's cross motion for summary judgment in her favor on the issue of liability against the taxi defendants, are both granted, the complaint and all cross claims are severed and dismissed against defendants GVC II, Inc., Filiberto Quinones, Metropolitan Transit Authority and New York City Transit Authority-Access-A-Ride, and plaintiff is awarded summary judgment in her favor on the issue of liability against Bravflo Corp. and Mamadou Dao; and it is further

ORDERED that the taxi defendants' motion for consolidation is granted, the case currently pending in Supreme Court, Bronx County, entitled *Quinones v Bravflo Corp.* and bearing index No. 20677/2017E, is consolidated for all purposes in this court under Index No. 151247/2016, and the pleadings in each action shall stand as the pleadings in the consolidated action; and it is further

ORDERED that the consolidated action shall bear the following caption:

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ZINA MINGO and FELIBERTO QUINONES,
Plaintiffs,

-against-

BRAVFLO CORP. and MAMADOU DAO,
Defendants.
-----X

And it is further

ORDERED that, upon searching the record, Filiberto Quinones is awarded summary judgment in his favor on the issue of liability against defendants Bravflo Corp. and Mamadou Dao; and it is further

ORDERED that **counsel for the Access-A-Ride defendants** is directed to e-file a completed Notice to County Clerk (Form EF-22), which shall be e-filed as a “Notice to County Clerk – CPLR 8019 (c)” in the drop-down menu, with a copy of this order attached thereto, within 20 days after this order is entered, **UNDER THE NEW YORK COUNTY INDEX NUMBER**, and the New York County Clerk is directed to mark this Court’s records to effectuate the consolidation, to amend the caption to remove GVC II, Inc., Filiberto Quinones, Metropolitan Transit Authority and New York City Transit Authority-Access-A-Ride from the caption as defendants, and to add Filiberto Quinones as a plaintiff in the consolidated action; and it is further


ORDERED that **counsel for the taxi defendants** is directed to e-mail a copy of this order to the General Clerk’s Office, at genclerk-ords-non-mot@nycourts.gov, with the subject “Service of Order -- Consolidation,” and the Clerk is directed to effectuate the transfer, consolidation, and amendment of the caption; and it is further

ORDERED that **counsel for the taxi defendants** is directed to e-file a completed Notice to County Clerk (Form EF-22), which shall be e-filed as a “Notice to County Clerk – CPLR 8019 (c)” in the drop-down menu, with a copy of this order attached thereto, within 20 days after this order is entered, **UNDER THE BRONX COUNTY INDEX NUMBER**, and the Clerk of Bronx

County is directed to effectuate the transfer of the action entitled *Quinones v Bravflo Corp.* and bearing index No. 20677/2017E to this Court for consolidation; and it is further

ORDERED that a status conference will be held on the consolidated action in Part 2, 80 Centre Street, Room 280 on July 10, 2018 at 2:15 p.m.

3/8/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE