

**Gyesie v New York City Tr. Auth.**

2018 NY Slip Op 32560(U)

October 12, 2018

Supreme Court, New York County

Docket Number: 151265/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. KATHRYN E. FREED PART IAS MOTION 2  
*Justice*  
-----X  
INDEX NO. 151265/2017  
GEORGINA GYESIE, MOTION SEQ. NO. 001  
Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, CITY OF NEW YORK,  
ACCESS A RIDE, CARERIDE PARATRANSIT LLC,  
METROPOLITAN TRANSIT AUTHORITY BUS COMPANY, RICKY  
MCCANTS, MV PUBLIC TRANSPORTATION INC., and TAMIKAH  
ANDERSON,

**DECISION AND ORDER**

Defendants.

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41,  
42, 43, 44, 45  
were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this action arising from a motor vehicle collision, defendants New York City Transit Authority (“NYCTA”), City of New York (“the City”), Careride Paratransit LLC (“Careride”), Metropolitan Transit Authority Bus Company (“MTA Bus Company”), and Ricky McCants (“McCants”) move, pursuant to CPLR 3211(a)(7), for summary judgment in favor of the City.<sup>1</sup> After a review of the motion papers, as well as a review of the relevant statutes and case law, the motion, which is unopposed by plaintiff Georgina Gyesie (“Gyesie”), is **granted**.

<sup>1</sup> This Court notes initially that motions for summary judgment are brought pursuant to CPLR 3212, not CPLR 3211(a)(7), which pertains to motions to dismiss an action for failure to state a claim. However, after reviewing the submitted papers, this Court will treat the motion as one for summary judgment under CPLR 3212, as well as for dismissal under CPLR 3211(a)(7). (See *Monteferrante v New York City Fire Dept.*, 63 AD2d 576, 576 [1st Dept 1978] (where the motion is denominated as one “For Summary Judgment” but the body of the motion seeks an order to dismiss the complaint pursuant to CPLR 3211[a][7], courts may properly treat the motion “in its hybrid aspect, that is, as one for summary judgment and for dismissal under CPLR 3211[a][7]”).)

**FACTUAL AND PROCEDURAL BACKGROUND:**

On December 5, 2015, plaintiff was allegedly injured in a motor vehicle accident that occurred at the intersection of Washington Avenue and Thompson Street in Manhattan. (Doc. 38 at 1–2.) Plaintiff commenced this action against defendants on February 6, 2017 by filing a summons and verified complaint. (Doc. 39.) The claim brought against the City stems from her allegation that it was negligent in the ownership, operation, management, use, and control of the vehicle in which plaintiff was a passenger during the accident. (*Id.* at 13–14.)

Defendants NYCTA, the City, Careride, MTA Bus Company, and McCants now move, pursuant to CPLR 3211(a)(7), for summary judgment dismissing the complaint as against the City. (Doc. 38.) They assert that, at the time of the accident, NYCTA owned the subject vehicle and that it was operated by McCants during the course of his employment by non-party Premier Paratransit. (*Id.* at 2.) Defendants submit the affidavit of Robin Cooper (“Cooper”), an employee of the MTA, who states that the subject vehicle was owned by NYCTA but was registered to Careride, which provides public paratransit services on behalf of NYCTA.<sup>2</sup> (Doc. 42 at 2.) Therefore, defendants argue, because the City had no ownership interest in the vehicle and was not responsible for its operation at the time, the City owed no duty of care toward plaintiff and cannot be held liable for the injuries stemming from her alleged accident. (Doc. 38 at 2–3.)

In a letter dated October 3, 2018, plaintiff indicated to this Court that she would take no position with respect to defendants’ motion and that she was not planning to submit opposition papers. (Doc. 45.)

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<sup>2</sup> There is a slight inconsistency as to the New York State registration number of the vehicle at issue. Plaintiff’s complaint charges defendants with the negligent operation of a vehicle with New York registration number 75867 LA. (Doc. 39 at 11.) Cooper’s affidavit in support of defendants’ motion lists the vehicle’s registration number as 7867LA. (Doc. 42 at 2.) However, this Court will ignore that inconsistency as the moving defendants admit that the City was neither the owner nor the operator of the vehicle. (Docs. 38, 42.)

**LEGAL CONCLUSIONS:**

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) In so doing, the movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*)

The threshold question in tort cases is whether the defendant owed a duty of care toward the injured party. (*See Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 138 [2002].) Here, the City did not owe a duty of care toward plaintiff at the time of her accident because the subject vehicle was owned by defendant NYCTA and was operated by defendant McCants. (Docs. 38, 42.) Moreover, plaintiff has not raised any triable issue of fact in regard to the vehicle's ownership because plaintiff has not taken a position on defendants' motion. (Doc. 45.) Absent a showing that the City had any interest in the vehicle, plaintiff cannot maintain a cause of action against it. (*See Farrulla v Happy Care Ambulette Inc.*, 125 AD3d 529, 530 [1st Dept 2015] (company was not liable for plaintiff's injuries because it was not the owner of the vehicle at issue).)

In accordance with the foregoing, it is hereby:

**ORDERED** that defendants New York City Transit Authority, City of New York, Careride Paratransit LLC, Metropolitan Transit Authority Bus Company, and Ricky McCants' motion for summary judgment in favor of the City of New York is granted; and it is further

**ORDERED** that defendant City of New York is no longer a party to this action, as it is not liable for plaintiff Georgina Gyesie's injuries; and it is further

**ORDERED** that the new caption shall read

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GEORGINA GYESIE,

Index No.  
151265/2017

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY,  
ACCESS A RIDE, CARERIDE PARATRANSIT  
LLC, METROPOLITAN TRANSIT AUTHORITY  
BUS COMPANY, RICKY MCCANTS, MV  
PUBLIC TRANSPORTATION INC., and  
TAMIKAH ANDERSON,

Defendants.  
-----X

and it is further

**ORDERED** that plaintiff's remaining causes of action shall continue against remaining defendants; and it is further

**ORDERED** that, within 20 days of the entry of this order, defendants' counsel shall serve a copy of this order with notice of entry on all parties and on the County Clerk (Room 141B) at 60 Centre Street and the Clerk of the Trial Support Office (Room 158) at 60 Centre


Street, who are directed to mark the Court's records to reflect the changes in the caption herein;  
and it is further

**ORDERED** that all remaining parties are to appear for a preliminary discovery  
conference on October 23, 2018, at 2:15 PM in Room 280 at 80 Centre Street; and it is further

**ORDERED** that this constitutes the decision and order of this Court.

10/12/2018

DATE

  
KATHRYN E. FREED, 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