

Wells v Guzman

2021 NY Slip Op 30040(U)

January 8, 2021

Supreme Court, New York County

Docket Number: 154962/2019

Judge: Laurence L. Love

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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. LAURENCE L. LOVE **PART** **IAS MOTION 62**

Justice

-----X

DEREK WELLS,

Plaintiff,

- v -

LUIS GUZMAN, NEW YORK CITY TRANSIT AUTHORITY,
CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 154962/2019

MOTION DATE 11/19/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the motion is decided as follows:

In an Order dated April 21, 2020, this Court, denied, with leave to renew upon proper papers, defendants' cross-motion seeking summary judgment, dismissing this action based upon defendants' failure to establish their entitlement to dismissal pursuant to the Graves Amendment (see 49 USC § 30106 [a]; *Ballatore v HUB Truck Rental Corp.*, 83 AD3d 978, 979 [2011]). Defendant, the City of New York now moves to reargue said Order.

A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A "motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered

by the court” (see, *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]).

The instant action arises out of a motor vehicle accident which occurred on November 19, 2018. Plaintiff alleges that while fully stopped, in his lane, for approximately ten seconds, he was struck in the rear by a vehicle operated by defendant, Luis A. Guzman and owned by the municipal defendants.

In support of its original motion, defendants submitted the affidavits of Utilda Ramsay, a claims specialist employed by MTA/New York City Transit Authority and Joseph Cappellino, a computer administrator employed by the NYC DOT Fleet Services, which established the following: The New York City Transit Authority is in the business of providing public transportation and regularly leases busses and vehicles to private carriers. The Transit Authority is the owner of a 2015 Toyota Sedan, New York License Number BA 9841, VIN Number 4T1BF1FK7FU114628. Said Toyota was leased to MV Public Transportation, Inc. Mr. Guzman’s affidavit established that at the time of the accident, he was employed by Metropolitan Transportation and driving an MV Transportation vehicle.

Defendants’ underlying motion was denied on the basis that the municipal defendants failed to establish entitlement to summary judgment based upon their failure to attach and authenticate the lease in their motion papers. However, said denial is only relevant as to the causes of action asserted against the New York City Transit Authority. As the evidence conclusively establishes that the vehicle involved in the accident was owned by the Transit Authority and operated by Luis Guzman in the course of his employment with MV Public Transportation, Inc, the City of New York should have been granted summary judgment, dismissing this action as there is no theory of liability relevant to the City. As such, it is hereby

ORDERED that defendants' motion seeking leave to reargue is GRANTED and upon reargument, it is

ORDERED that the branch of defendants' cross-motion seeking dismissal of this action as to the New York City Transit Authority is denied with leave to renew upon proper papers.

ORDERED that branch of defendants' cross-motion seeking summary judgment, dismissing the City of New York from this action is GRANTED, and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

The instant action and all pending motions are respectfully referred to the Transit part as the City of New York is no longer a party to this action.



1/8/2021
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE