

Parker v Williams

2023 NY Slip Op 31626(U)

May 4, 2023

Supreme Court, New York County

Docket Number: Index No. 153445/2021

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 153445/2021
GWENEVERE VALORIE PARKER, MOTION SEQ. NO. 003

Plaintiff,

- v -

GREGORY WILLIAMS, ACCESS-A-RIDE, NEW YORK CITY
TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, YONETTE DAVIS

**DECISION + ORDER ON
MOTION**

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 93, 94, 95, 96, 98, 99, 100, 101, 102

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, Defendants ACCESS-A-RIDE, NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY's ("TRANSIT") motion for leave to reargue, pursuant to CPLR §2221(d), and upon reargument, for summary judgment pursuant to CPLR §3212 to dismiss the complaint and all cross claims, is granted.

The underlying incident concerns a motor vehicle accident that occurred on January 27, 2020 at approximately 4:20 p.m. on the Northbound FDR, near the Pearl Street entrance ramp, when a Ford vehicle, bearing New York State license plate, HSE2981, owned and operated by Defendant YONETTE DAVIS ("DAVIS"), was rear-ended by a Kia vehicle bearing New York State license plate, T733559C, owned and operated by Defendant GREGORY WILLIAMS ("WILLIAMS"). Plaintiff GWENEVERE VALORIE PARKER, a passenger in the Kia vehicle, has alleged to have sustained personal injuries as a result of the accident. (NYSCEF Doc. 1).

TRANSIT's prior cross-motion for summary judgment (Motion Seq. 2), was denied by Order of this Court dated November 18, 2022 (NYSCEF Doc. 81), which was served with notice of entry that same day (NYSCEF Doc. 82). Accordingly, TRANSIT's motion to reargue is timely. (*see* General Construction Law § 25-a[1]; *Weil v. Newton*, 211 A.D.3d 516, 516, 179 N.Y.S.3d

236, 237 [1st Dept 2022]). TRANSIT's motion to reargue does not individually re-submit all of the motion papers and exhibits from the prior motion; however, same are duly referred to in the motion to reargue by their NYSCEF filing number for this Court's consideration. Therefore, the motion to reargue will be considered on its merits.

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision'." (*William P. Pahl Equip. Corp. v. Kassiss*, 182 A.D.2d 22, 27, 588 N.Y.S.2d 8, 11 [1st Dept 1992], quoting *Schneider v. Solowey*, 141 A.D.2d 813, 529 N.Y.S.2d 1017 [2d Dept 1988]; see CPLR §2221[d][2]).

Upon reconsideration, although this Court previously found that TRANSIT had established that it did not own the subject Kia vehicle, this Court misapprehended the facts concerning WILLIAMS' relationship with the TRANSIT Defendants. As TRANSIT has established that WILLIAMS was not an agent, servant or employee of any of the TRANSIT Defendants, TRANSIT has demonstrated its *prima facie* right to judgment as a matter of law as there are no material issues of fact with respect to its alleged negligence. In opposition, Plaintiff fails to raise a material issue of fact.

The Plaintiff served a notice of claim, dated February 28, 2020, on each of the TRANSIT Defendants (NYSCEF Doc. 57). Therein, the notice of claim as to each of the TRANSIT Defendants describes the nature of claim as simply "personal injury".

However, the Plaintiff's complaint, filed on April 9, 2021, asserts claims sounding in negligence against the TRANSIT Defendants based upon their alleged ownership, management, maintenance, supervision, use and control of the Kia vehicle. (NYSCEF Doc. 1). It is also alleged that WILLIAMS (the operator of the Kia) was an employee, agent or servant of the TRANSIT Defendants, and that the accident occurred while WILLIAMS was operating the Kia vehicle in the course of his role as a driver for the TRANSIT Defendants' Access-a-Ride paratransit program.

TRANSIT joined issue by filing an answer on June 24, 2021. (NYSCEF Doc. 11). Therein, TRANSIT denied that WILLIAMS was its employee, agent or servant and denied that WILLIAMS was operating the Kia vehicle in the course of his employment for Access-a-Ride. TRANSIT also denied owning the Kia vehicle and denied any role in inspecting, repairing, maintaining, managing, or controlling the vehicle. WILLIAMS joined issue by filing an answer on June 9, 2021. (NYSCEF Doc. 10). In his answer, WILLIAMS admits to the ownership of the Kia vehicle, but, WILLIAMS

does not admit to having been an employee, agent or servant of the TRANSIT Defendants. WILLIAMS does not assert any cross-claims against TRANSIT.

By Order of Judge Suzanne Adams, dated November 22, 2021, it was held that Defendant DAVIS had made a *prima facie* showing of entitlement to summary judgment as there was no dispute that WILLIAMS had rear-ended the DAVIS vehicle and as WILLIAMS had not presented a non-negligent reason for the collision. (NYSCEF Doc. 27).

TRANSIT now argues that it cannot be held liable for the subject accident as it did not own the subject Kia vehicle involved in the accident, and because it did not employ or otherwise retain WILLIAMS to drive the Kia vehicle in connection with the Access-a-Ride program.

In support of the motion, TRANSIT relies upon the affidavit of Ronald Roberts an Administrative Associate for TRANSIT, whose responsibilities entail processing claims brought against TRANSIT in connection with the Access-a-Ride program. (NYSCEF Doc. 60). Therein, the Roberts Affidavit avers that a search of TRANSIT's records shows that they did not own the subject Kia vehicle involved in this accident, and that in fact, WILLIAMS was the owner of the vehicle, which is supported by the title records (NYSCEF Doc. 59). This is further supported by WILLIAMS' own acknowledgement of ownership in his answer to the complaint. Upon review, the Roberts Affidavit and the title records establish that at the time of the accident the Kia vehicle, bearing New York State license plate T733559C, was not owned by TRANSIT, but was in fact owned by Defendant WILLIAMS.

Pursuant to New York VTL §388, owners of motor vehicles are vicarious liability for the negligent acts of permissive drivers of such vehicles. An owner is described by VTL §128 as “[a] person, other than a lien holder, having the property in or title to a vehicle... [including] person entitled to the use and possession of a vehicle... subject to a security interest... and also includes any lessee... of a motor vehicle... having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.” (N.Y. Veh. & Traf. Law § 128). As TRANSIT has shown that it did not own or control the Kia vehicle at issue, TRANSIT cannot be held vicariously liable for the acts of the vehicle driver, WILLIAMS. (*See James v. R & G Hacking Corp.*, 39 A.D.3d 385, 835 N.Y.S.2d 61 [1st Dept 2007]).

TRANSIT also establishes that it did not employ WILLIAMS and that WILLIAMS was not acting on behalf of any Access-a-Ride, or any other TRANSIT paratransit program, at the time of the accident. The Roberts Affidavit avers that on the date of the accident, WILLIAMS was not

in the control of, or an agent, servant or employee of the TRANSIT Defendants. The Roberts Affidavit also avers that on the date of the accident, WILLIAMS was not affiliated, contracted, or retained to provide transportation services on behalf of the TRANSIT Defendants whatsoever. Notably, WILLIAMS, the individual in the best position to contradict or oppose TRANSIT's position regarding his relationship to TRANSIT, submits no argument or evidence claiming to have been an Access-a-Ride driver at the time of the accident. In fact, upon a review of the record, WILLIAMS has made clear in this litigation that he had no relationship with TRANSIT at the time of the accident. WILLIAMS does not admit that he was operating the Kia vehicle in connection with or at the behest of TRANSIT in his answer to the complaint. Moreover, WILLIAMS' affidavit in opposition to DAVIS' summary judgment motion (Motion Seq. 1) does not assert that he was working as an Access-a-Ride driver at the time of the accident. Finally, WILLIAMS has not opposed either the motion to reargue, nor TRANSIT's initial motion for summary judgment.¹

Plaintiff does not oppose that aspect of TRANSIT's motion concerning the fact that TRANSIT is not the owner of the subject Kia vehicle (NYSCEF Doc. 69, 98). Rather, Plaintiff, in the attorney affirmation in opposition, asserts, that because Plaintiff uses Access-a-Ride due to her status a blind person, and because she was a passenger in WILLIAMS' vehicle at the time of the accident, WILLIAMS must have been operating the Kia vehicle as an Access-a-Ride driver, and was thus under the direction of TRANSIT. However, no evidence has been submitted by Plaintiff in either opposition to the initial motion, or in opposition to the motion to reargue, that demonstrates that WILLIAMS was operating the Kia vehicle in connection with the Access-a-Ride program at the time of the accident. No affidavit on behalf of anyone with knowledge, including the Plaintiff herself, nor any other documentary evidence has been submitted to establish that WILLIAMS was acting as an Access-a-Ride, or other paratransit driver, on behalf of TRANSIT at the time of the accident. Upon a review of the record, Plaintiff has submitted an affidavit concerning the accident in connection with her own summary judgment motion (Motion Seq. 2). Therein, the Plaintiff does not reference the Access-a-Ride, or other paratransit program. Nor does Plaintiff submit any evidence supporting that she utilized such a program at the time of the accident. Speculation that WILLIAMS was an Access-a-Ride operator on behalf of the TRANSIT Defendants at the time of the subject accident is insufficient to raise a triable issue of

¹ Defendant WILLIAMS' opposition to Motion Seq. 2 was submitted in opposition to the Plaintiff's summary judgment motion for, not to TRANSIT's cross-motion. (NYSCEF Doc. 49).

fact. (See *Smith v. Johnson Prod. Co.*, 95 A.D.2d 675, 676, 463 N.Y.S.2d 464, 466 [1st Dept 1983]; *Rivera v. City of New York*, 210 A.D.3d 544, 545, 179 N.Y.S.3d 27, 29 [1st Dept 2022]).

The admissible evidence establishes that WILLIAMS was not an employee, agent or servant of TRANSIT and was not acting under the control or direction of TRANSIT at the time of the subject accident. Accordingly, as TRANSIT has established a *prima facie* right to judgment as a matter of law and as no material issues of fact have been raised in opposition, TRANSIT’s motion to reargue is granted, and upon reargument, TRANSIT is entitled to summary judgment and a dismissal of the complaint and all cross-claims.

It is hereby

ORDERED that Defendants ACCESS-A-RIDE, NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY’s motion for leave to reargue, pursuant to CPLR §2221, and upon reargument, for summary judgment is granted and the complaint and all cross-claims are dismissed in their entirety as against the movants, with costs and disbursements to the TRANSIT Defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of TRANSIT; and it is further

ORDERED that the action is severed and continued against the remaining defendant; 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 TRANSIT Defendants 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).

5/4/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

HON. DENISE M. DOMINGUEZ
J.S.C.