

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

Trezza,
-against-

Plaintiff(s),

Hon. Edgar Walker
PART: IA 27

Metropolitan Transportation Authority,
Defendant(s).

Index No. 310237-2008

-X
- Notice of Motion / OSC.....
- Answering Affidavits.....
- Reply Affidavits.....
- Pleadings.....
- Stipulations.....
- Memoranda of Law.....
- Other.....
-X

Upon the foregoing papers:

Motion and cross motion are resolved as follows:

Plaintiffs' motion for partial summary judgment on liability, pursuant to CPLR 3212, is granted. Defendant Olsen's cross-motion for summary judgment is granted. Plaintiff's were passengers in a vehicle operated by defendant Olsen. Based upon the affidavit of plaintiff Trezza, submitted in support of the motion, Olsen was proceeding north in the left lane of traffic. The road had two north-bound lanes. Trezza alleges that the Olsen vehicle was struck on the side by a bus owned by defendant MTA. Specifically she alleges that the bus entered their lane of traffic from the right suddenly and without notice or signal. This version of events is consistent with the affidavit from Olsen submitted in support of her cross-motion.

VTL § 1128(a) provides: A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Plaintiffs have submitted sufficient evidence to establish MTA's prima face negligence and to shift the burden of proof to the MTA to establish the existence of a triable issue of fact.

In opposition to the motions rather than submit an affidavit, MTA seeks to rely solely

upon statements contained in the MV-104. While the MV-104 is certified and therefore admissible the statements contained therein are unsworn and inadmissible hearsay and in and of itself insufficient to establish an issue of fact. *Johnson v. Phillips*, 261 AD2d 269; *Rue v Stokes* 191 AD2d 245. MTA also argues that the motion is premature as discovery is not complete. The court notes that hearings have been held pursuant to §50-h. Without any allegation as to what MTA seeks to adduce at a deposition, mere hope or unsubstantiated allegations, are insufficient to defeat the motion. *Miller v. the City of New York*, 277 AD2d 363.

Upon the filing of the note of issue this matter shall be set down for a trial on "damages" including the threshold issue as to whether the plaintiffs have suffered a "serious injury" within the meaning New York State Insurance Law § 5102(d).

Dated:

July 14, 2009



Hon. Edgar G. Walker, J.S.C.