

Velasquez v Corporation
2012 NY Slip Op 33859(U)
September 11, 2012
Supreme Court, Bronx County
Docket Number: 350201/09
Judge: Lizbeth Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART PP4

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Wilmer Velasquez, an infant by his mother and
natural guardian, Maribel Velasquez, and
Maribel Velasquez, individually,

Plaintiffs,

DECISION and ORDER
Index No 350201/09

-against-

Jose R. Corporation and Juan J. Taik.

Defendants.

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Recitation of the papers considered in reviewing the underlying motion for summary judgment as
required by CPLR § 2219(a):

Notice of Motion and annexed Exhibits and Affidavits.....	1
Notices of Cross-Motion and annexed Exhibits and Affidavits.....	2

Plaintiff Wilmer Velasquez (“infant plaintiff”) and his mother, plaintiff Maribel Velasquez, (“plaintiff Velasquez”) claim that the infant plaintiff sustained serious injuries as a result of the defendants’ negligence. The plaintiffs allege that the infant plaintiff was lawfully crossing the street when he was struck by a taxicab operated by defendant Juan J. Taik and owned by defendant Jose R. Corporation. (“Corporation”) on 2/28/08. Defendant Taik moves to dismiss the plaintiff’s complaint against him and for summary judgment pursuant to CPLR 3212 on liability grounds. Defendant Corporation cross-moves for the same relief on the same grounds. The plaintiffs cross-move to amend their pleadings.

The Alleged Accident

On the morning of 2/28/08, infant plaintiff was crossing East 137th Street and Brown Place when he was struck by a taxicab. After the accident, the taxicab stopped but the driver remained in the vehicle. After waiting a few minutes, the driver fled the scene. Isela Bonilla, a witness to the

accident, observed the taxicab's license plate as T491698C. The plaintiffs' claim for MVAIC no-fault benefits was denied on the grounds that the taxicab was insured under American Transit and its policy was in effect on the accident date. The policy holder was identified as defendant Corporation. The New York State Department of Motor Vehicle's ("DMV") expansion search of the license plate number yielded Taik K. Jung as the vehicle's registrant.

DISCUSSION

It is well settled that summary judgment is a drastic remedy which can only be granted when it is clear that there are no triable issues of fact (*Middle Village Associates v Pergament Home Centers, Inc.*, 184 Misc 2d 552 [2000], quoting *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986] or where the issue is even debatable. (*Stone v Goodson*, 200 NYS2d 627 [1960].)

Defendant Taik's Motion

Defendant Juan J. Taik moves for summary judgment on the ground that he had no involvement in the alleged 2/28/08 accident. The plaintiffs concede that Mr. Taik is a wrongly named party. Defendant Corporation presents no opposition to defendant Taik's motion.

Defendant Corporation's Cross-Motion

Defendant Corporation cross-moves to dismiss the plaintiff's complaint and for summary judgment pursuant to CPLR 3212 on liability grounds. The defendant, like defendant Taik, contends that it had no involvement in the alleged accident. In support of its cross-motion, defendant Corporation proffers a letter and the sworn statement of Franklyn Ortega, an unnamed party but the alleged driver of the subject taxicab.

Mr. Ortega asserts in his 6/2/08 statement that he is the sole driver of a livery taxicab bearing license plate number T491698C, the same plate identified by Ms. Bonilla, the accident's eyewitness. His daily tour of duty is from 6PM to 5AM. Mr. Ortega maintains that on 2/28/08, the accident

date, the taxicab was parked on East 183rd Street between Southern Boulevard and Garden Street and the car keys were in his possession. He was not in the area of East 137th Street and Brown Place and his taxicab was neither involved in an accident nor made contact with a pedestrian.

Mr. Ortega states in his 5/13/08 letter that he is employed by defendant Corporation. He works from 6PM to 5AM six days a week. Attached to his letter is the alleged "roll call" from his base, High Class Bronx Limo and C&S. The roll call bearing Mr. Ortega's name and identifying him as driver number 2285 provides an itemized list consisting of a call number and the date, time and location of all passenger pick-ups. Although spaces are allotted for the passenger's destination location and the price charged for each trip, this pertinent information is omitted. According to the roll call, Mr. Ortega worked from 1:13PM to 11:19PM on 2/28/08, the accident date. Although the roll call establishes that Mr. Ortega was not working at 9:19AM on the accident date, the times provided are inconsistent with his 6PM to 5AM tour of duty as previously stated in his statement and letter.

In opposition to defendant Corporation's motion, the plaintiffs proffer a 4/11/08 New York Motor Vehicle No-Fault Insurance Law Cover Letter and a 5/9/08 American Transit Insurance Company letter wherein defendant Corporation is respectively identified as the policy holder and the insured relative to the subject license plate number.

The plaintiffs contend that Mr. Ortega signed a motor vehicle accident report wherein Mr. Ortega is identified as the driver; defendant Corporation as the name on the vehicle's registration; T491698C as the plate number; and a 1999 Lincoln as the vehicle's year and make. The person or entity that created the accident report is unknown.

Plaintiffs Cross-Motion

Infant plaintiff and plaintiff Velasquez's DMV expansion search of the plate number yielded

Taik J. Jung as the registrant of the taxicab. The plaintiffs accordingly cross-move to amend their pleadings to remove Juan J. Taik as a named party and replace him with Taik J. Jung. In the absence of prejudice or surprise to the opposing party, leave to amend pleadings is freely granted. (*Spitzer v Schussel*, 850 NYS 2d 431, quoting *Loomis v Civetta Corinno Constr. Corp.*, 444 NYS2d 571 [1981].) Here, releasing Juan J. Taik, the wrong party, from the action neither prejudices nor surprises the remaining parties.

CONCLUSION

After a careful review of the evidence, the Court decides the underlying motions as follows: Defendant Taik's motion to dismiss the plaintiff's complaint against him and for summary judgment on liability grounds is granted on consent by the plaintiffs and without opposition from defendant Corporation.


Defendant Corporation's cross-motion to dismiss the plaintiffs' complaint against it and for summary judgment pursuant to CPLR 3212 on liability grounds is denied. The plaintiffs proffered sufficient evidence to create a triable issue of fact regarding the corporation's ownership of the taxicab allegedly involved in the subject accident.

The plaintiffs' cross-motion to amend their pleadings to remove Juan J. Taik as a named party and replace him with Taik J. Jung is granted without opposition.

Defendant Taik, the movant of the original motion, shall serve a copy of this Decision and Order with notice of entry upon the remaining parties within 20 days. This is the Decision and Order of the Court.

Dated: September 11, 2012

So ordered,



Hon. Lizbeth González, AJSC

LIZBETH GONZALEZ