Tejada v Gomez

2015 NY Slip Op 32369(U)

December 14, 2015

Supreme Court, New York County

Docket Number: 157681/15

Judge: Geoffrey D. Wright

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---x
YADIRA TEJADA,

Plaintiffs,

Index # 157681/15

-against-

DECISION/ORDER

RENZO GOMEZ, EVERRAY AUTO VENTURE,
Defendants.

Present:
Hon. Geoffrey D. Wright
---x Acting Justice Supreme Court

RECITATION, AS REQUIRED BY CPLR § 2219 (A), of the papers considered in the review of this Motion/Order to Dismiss/Summary Judgment.

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed......	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits....................................	2
Replying Affidavits.......................................	3
Exhibits..	
Memoranda..	
Cross-Motion	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Co-defendant, Everray Auto Venture, ("Everray") moves for an Order pursuant to CPLR 3211, 3212 and USC §30106 (The Graves Amendment) dismissing Plaintiff's Complaint on the grounds that the Plaintiff has no viable cause of action against them. For the reasons discussed below, the motion in granted.

This is an action to recover for personal injuries alledgely sustained by the Plaintiff, Yadira Tejada ("Plaintiff") on or about February 27, 2015. The action was commenced by the filing of a Summons and Complaint on July 27, 2015. Issue was joined by Defendant, Renzo Gomez ("Gomez") and Defendant, Everray Auto Venture ("Everray") on August 18, 2015 and September 15, 2015 respectively.

In the complaint, Plaintiff alleges she sustained serious physical injuries as a result of a motor vehicle accident which occurred on February 27, 2015 on the northbound Major Deegan Expressway at the East 138th Street overpass in Bronx County, City and State of New York. Plaintiff's complaint assert vicarious liability based on Everray's ownership of the vehicle. The vehicle driven by Gomez was registered to Everray Auto Venture, LLC and was rented by Gomez from AAMCAR II Car Rentals, a rental division of Everray.

Everray now moves, prior to depositions, for an order of dismissing the complaint against it, alleging that under the Federal Transportation Equity Act of 2005, 49 U.S.C. § 30106, commonly known as the "Graves Amendment," a leasing/rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter, its employees or agents. Everray asserts that the Graves Amendment preempts New York Vehicle and Traffic Law § 388.

In support of the motion Everray includes a copy of the vehicle registration card which shows the vehicle as being registered to Everray and the sworn affidavit of Amos Ben-Israel, Member of Everray. In his affidavit Mr. Ben-Israel states that Gomez was not an employee or agent of Everray and that Gomez entered into a rental agreement. Further Mr. Ben-Israel stated that Everray was the titled owner and never possessed dominion control or authority over the vehicle. Additionally, he stated that the vehicle had no complaints regarding its performance and that each vehicle is routinely inspected to verify there are no mechanical issues before it leaves the rental premises; and that it had scheduled maintenance prior to the accident. In addition, the vehicle is test driven in between rentals and kept in a garage. Included in the record, is a copy of the maintenance record for the vehicle as well as a copy of the rental agreement signed by Gomez along with a copy of the police report.

In the opposition, the crux of Plaintiff's argument is that Everray's motion is premature, and that limited discovery has been exchanged. Plaintiff argues, it has not been confirmed that Gomez was indeed a customer and not an employee or agent of Everray. They contend that depositions are necessary to confirm the status of Gomez and to confirm that the vehicle was in good and safe operating condition at the time of the accident.

The Graves Amendment, regarding rented or leased motor vehicle safety and responsibility, bars vicarious liability actions against professional lessors and renters of vehicles, as would otherwise be permitted under Vehicle and Traffic Law § 388 (Gluck v Nebgen, 72 AD3d 1023, 898 N.Y.S.2d 881 [2d Dept. 2010]; Graham v Dunkley, 50 AD3d 55, 852 N.Y.S.2d 169 [2d Dept. 2008]; Hernandez v. Sanchez, 40 AD3d 446, 836 N.Y.S.2d 577 [1st Dept. 2007]).

The Transportation Equity Act of 2005 (49 USC § 30106) provides in pertinent part:

§ 30106 Rented or leased motor vehicle safety and responsibility.

"(a) In general.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if:

"(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

"(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)"

However, the courts have held in this regard that although the Graves Amendment bars negligence claims against car-rental companies based solely on a theory of vicarious liability (Graham v Dunkley, supra; Hernandez v Sanchez, supra.), a claim based upon negligent maintenance is not barred by the Graves Amendment since the statute does not absolve leasing companies of their own negligence (Collazo v MTA-New York City Tr., 74 AD3d 642, 905 N.Y.S.2d 30 [1st Dept. 2010]; Novovic v Greyhound Lines, Inc., 2008 U.S. Dist LEXIS 94176 [ED NY 2008]).

There is no question that the Graves Amendment preempts all state statutes to the extent they hold those owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrong doing on the part of the owner (Clarke v Hirt, 46 Misc. 3d 571 (N.Y. Sup. Ct. 2014)). In this case there is nothing to suggest that the car was not properly maintained or that mechanical failure contributed to the accident. Indeed, Plaintiff's main argument is that more discovery is needed to confirm that mechanical failure was not a factor and to confirm that Gomez was not an employee or acting as an agent for Everray.

Upon review and consideration of the defendant's motion, the plaintiffs's affirmation in opposition and the defendant's reply thereto this court finds that there is no dispute that Everray is a leasing company and therefore cannot be held liable as a lessor unless the vehicle was not in good and safe operating condition at the time of the accident. Plaintiff offers no proof that the accident occurred as a result of anything other than human error and notably co-defendant Gomez has not filed a cross-claim against Everray alleging improper maintenance of the vehicle. It appears that Plaintiff is hoping to find some evidence to contradict the rental agreement, the affidavit from Mr. Ben-Israel and the maintenance records submitted by Everray.

It is well settled that an argument opposing summary judgment on the grounds of insufficient discovery "is unavailing where the nonmoving party has failed to 'produce some evidence indicating that further discovery will yield material and relevant evidence'" (Heritage

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Hills Soc., Ltd. v Heritage Development Group, Inc., 56 AD3d 426, 427, 867 N.Y.S.2d 149 [2d Dept 2008], *quoting* Fleischman v Peacock Water Co., Inc., 51 AD3d 1203, 1205, 858 N.Y.S.2d 421 [3d Dept 2008]); Hayden v City of New York, 26 A.D.3d 262, 809 NYS2d 75, 76 [1st Dept 2006]. ["Based on the record, the discovery that has already taken place, and the lack of a showing of what further evidence might be unearthed, the asserted need for further discovery reduces itself to a 'mere hope,' which is insufficient to defeat summary judgment"]; Steinberg v Abdul, 230 AD2d 633, 633, 646 N.Y.S.2d 672 [1st Dept 1996] ["We add that the mere hope, expressed by plaintiffs, that evidence sufficient to establish defendants' assumption of a duty to plaintiffs' decedent may be obtained during discovery does not fulfill their obligation to demonstrate the likelihood of such disclosure (CPLR 3212[f]) and, thus, is insufficient to defeat defendants' motions for summary judgment"]; Frierson v Concourse Plaza Associates, 189 AD2d 609, 610, 592 N.Y.S.2d 309 [1st Dept 1993].

In the instant case, plaintiffs have provided insufficient evidentiary basis in its opposition papers indicating that further discovery will yield material and relevant evidence. Therefore, Everray's motion to dismiss the plaintiff's claims based solely on vicarious liability against the co-defendant Everray, is granted pursuant to CPLR 3211 (a)(7) as those claims fail to state a cause of action (Burrell v Barreiro, 83 AD3d 984, 922 N.Y.S.2d 465 [2d Dept. 2011]; Byrne v Collins, 77 AD3d 782, 910 N.Y.S.2d 449 [2d Dept. 2010]).

Accordingly, it is hereby,

ORDERED, that the Clerk of Court is directed to enter judgment in favor of co-defendant, Everray Auto Venture, dismissing the complaint as to Everray AutoVenture only.

This constitutes the Decision and Order of the Court.

Dated: December 14, 2015

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court