Vega v Bekoe
2017 NY Slip Op 33387(U)
July 14, 2017
Supreme Court, Orange County
Docket Number: Index No. EF003988-2016
Judge: Robert A. Onofry

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, A.J.S.C.

SUPREME COURT : ORANGE COUNTY

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SOLEDAD VEGA and EDDY REYES
Plaintiffs,

- against –

PRINCE BEKOE, BLAINE HOYT NOLAN and THE HERTZ CORPORATION,
Defendants.

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF003988-2016

DECISION AND ORDER

Motion Date: May 31, 2017 and June 28, 2017

The following papers numbered 1 to 6 were read and considered on a motion by the Defendant The Hertz Corporation, pursuant to CPLR §3211(a)(7), to dismiss the complaint and all cross claims insofar as asserted against it.

Notice of Motion - Lee Affirmation - Exhibits A-H	1-3
Affirmation in Opposition- Campbell	4
Affirmation in Reply- Lee- Exhibits I-J	5-6

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied.

Introduction

The Plaintiffs commenced this action to recover damages allegedly arising from a multiple vehicle accident.

The Plaintiffs allege that, on July 24, 2015, a vehicle owned and being operated by the Plaintiff Eddy Reyes, in which the Plaintiff Soledad Vega was a passenger, came into contact

with a vehicle owned and being operated by the Defendant Prince Bekoe, and a vehicle owned by the Defendant The Hertz Corporation and being operated by the Defendant Blaine Hoyt Nolan.

The Defendant The Hertz Corporation (hereinafter "Hertz") moves to dismiss the complaint and all cross claims insofar as asserted against it.

Hertz argues that, as a corporation in the business of renting vehicles, it is immune from vicarious liability in the case pursuant to the Graves Amendment, embodied in 49 USC §30106.

In opposition to the motion, the Plaintiff notes that it alleged that Hertz had negligently failed to maintain the vehicle. Indeed, they note, Hertz had not provided any meaningful disclosure concerning the same. Thus, they argue, the motion must be denied.

In reply, Hertz argues that conclusory allegations of improper maintenance are insufficient to keep it in the case.

In any event, Hertz notes, although the Plaintiffs complain that it failed to provide meaningful disclosure, the Plaintiffs had not demanded any. Moreover, Hertz notes, regardless, it had provided the Plaintiff with all of its maintenance records on the vehicle, which show no mechanical issues with vehicle prior to the accident (Exhibit K).

Discussion/Legal Analysis

On a motion to dismiss a complaint, pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83; *Aviaev v. Nissan Infiniti LT*, 150 A.D.3d 807 [2nd Dept. 2017]. However, bare legal conclusions are not presumed to be true. Moreover, where evidentiary

material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not granted. *Aviaev v. Nissan Infiniti LT*, 150 A.D.3d 807 [2nd Dept. 2017].

Pursuant to 49 U.S.C. § 30106(a), also known as the Graves Amendment, "the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle if the owner (i) is engaged in the trade or business of renting or leasing motor vehicles, and (ii) engaged in no negligence or criminal wrongdoing." *see, Aviaev v. Nissan Infiniti LT*, 150 A.D.3d 807 [2nd Dept. 2017]; *Anglero v. Hanif*, 140 A.D.3d 905 [2nd Dept. 2016]. The legislative history of the Graves Amendment indicates that it was intended to protect the vehicle rental and leasing industry against claims for vicarious liability where the leasing or rental company's only relation to the claim was that it was the technical owner of the vehicle. *Anglero v. Hanif*, 140 A.D.3d 905 [2nd Dept. 2016].

Thus, for example, the Graves Amendment would not apply where a plaintiff seeks to hold a vehicle owner/lessor liable for the alleged failure to maintain a rented vehicle. *Olmann v. Neil*, 132 A.D.3d 744 [2nd Dept. 2015].

Here, in support of its motion, Hertz failed to demonstrate a *prima facie* entitlement to judgment as a matter of law. Rather, although it presented evidence that it is engaged in the trade or business of renting or leasing motor vehicles, it failed to demonstrate, *prima facie*, that the vehicle was properly maintained. *Olmann v. Neil*, 132 A.D.3d 744 [2nd Dept. 2015].

The Court notes that Hertz improperly offered maintenance records with its reply papers. The function of reply papers is to address arguments made in opposition to the position taken by the movant, and not to permit the movant to introduce new arguments or evidence in support of, or new grounds for a motion. *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204 [2nd Dept. 2009].

In any event, even if considered, the Court would not find the records, in and of themselves, are sufficient to establish, *prima facie*, that the vehicle was properly maintained at the time of the accident at issue.

Thus, the motion is denied regardless of the sufficiency of the opposing papers. *Olmann v. Neil*, 132 A.D.3d 744 [2nd Dept. 2015].

Accordingly, and in accordance with the foregoing, it is hereby,

ORDERED, that the motion is denied; and it is further,

ORDERED, that the parties are directed to appear for a Preliminary/Status Conference on Tuesday, August 29, 2017, at 1:30 P.M., at the Orange County Surrogate's Court House, 30 Park Place, Goshen, New York.

This constitutes the Decision and Order of the Court.

Dated: July 14, 2017
Goshen, New York

ENTER

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