

**Cobb v WDF Inc.**

2019 NY Slip Op 31909(U)

July 1, 2019

Supreme Court, New York County

Docket Number: 160090/2016

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 22

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VELMA COBB,  
  
Plaintiff,

- v -

WDF INC., EDWIN RIVERA  
  
Defendant.

INDEX NO. 160090/2016

MOTION DATE 11/07/2018

MOTION SEQ. NO. 002

**DECISION AND ORDER**

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 60, 62, 64, 65, 66, 67, 77, 78, 79

were read on this motion to/for JUDGMENT - SUMMARY.

Before the Court is defendants WDF Inc. and Edwin A. Rivera's motion, motion sequence 002,

seeking Partial Summary Judgment to dismiss plaintiff's Second Cause of Action in the complaint which allege negligent hiring, retention and entrustment against defendant WDF; gross negligence and willful conduct, as well as any and all claims for punitive damages against both defendants.

The matter at issue stems from a motor vehicle accident which occurred on October 25, 2016 when a vehicle owned by defendant WDF and operated by defendant Rivera turned onto the intersection of 125<sup>th</sup> Street and Madison Avenue in the City, County, and State of New York and struck pedestrian plaintiff Velma Cobb allegedly resulting in the serious injury of plaintiff.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64

NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the

burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“[R]ecoverly on a negligent hiring and retention theory requires a showing that the employer was on notice of the relevant tortious propensities of the wrongdoing employee” (*Gomez v City of New York*, 304 AD2d 374, 375 [1st Dep’t 2003]). A necessary element for a cause of action for negligent hiring, retention, or entrustment is that the employer knew or should have known of any facts that would have led a reasonably prudent person to further investigate the employee at issue (*Acosta-Rodriguez v City of New York*, 77 AD3d 503, 504 [1st Dep’t 2010]). Where a party seeks punitive damages, it must present evidence of “such a high degree of moral turpitude and wanton dishonesty as to imply criminal indifference to civil obligations which is aimed at the public, generally” (*Lavanant v General Accident Ins. Co. of Am.*, 212 AD2d 450, 451 [1995]).

Defendants aver that WDF had no notice of any propensity of defendant Rodriguez to drive in a negligent manner. In support of their position, defendants submit the depositions of defendant Rivera and Jeff Laureano on behalf of defendant WDF (Mot, Exh E & G). Defendants note that defendant Rivera has obtained several certifications, endorsements and relevant training that qualified him to operate a WDF vehicle. Specifically, defendants note that defendant Rivera is a Union Teamster Driver who obtained his CDL license in 2006 and has been driving commercially since 2008 (Mot, EXH E at 11-12). Defendant Rivera attended a driving course at the Ferrari Driving School in Queens, New York, in addition to undergoing additional driving tests during his career with U.S. Foods in New Jersey (*id.*, at 12-13). At the time of deposition, defendant Rivera held multiple endorsements on his professional license including: double and

triple tractor vehicle endorsements; fuel and chemical tankers endorsements and passenger endorsements (*id.*, at 15-18).

Additionally, defendants note that defendant Rivera never had his personal nor CDL license suspended or revoked (*id.*, at 46-47). Rivera was never the subject of a lawsuit nor did he receive any violations or fines before the present accident (*id.* at 56). In order to gain employment with WDF, Rivera was required to complete an application and a drug test (*id.*, at 20-21). The Court notes that WDF properly vetted defendant Rivera before he began driving the WDF vehicle. Defendants have demonstrated that they were not on notice, either actual or constructive, of any negligent propensity of defendant Rivera.

In opposition, plaintiff has failed to raise an issue of fact as to whether Rivera was negligently hired, retained, or entrusted by WDF. Plaintiff has not proffered any evidence as to substantiate facts which would have triggered a duty for WDF to inquire further into defendant Rivera before hiring him (*Acosta-Rodriguez v City of New York*, 77 AD3d at 504). Accordingly, the Court finds that defendant WDF did not engage in gross negligence, willful conduct or negligent hiring, retention and entrustment for employing defendant Rivera to operate their vehicle. Absent such a finding, the Court further finds that defendants have demonstrated that defendants did not engage in any behavior with “such a high degree of moral turpitude and wanton dishonesty as to imply criminal indifference to civil obligations which is aimed at the public, generally,” to warrant punitive damages (*Lavanant*, 212 AD2d at 451 [1995]).

Plaintiff has failed to raise any issues of fact such that defendants’ motion for Partial Summary Judgment to dismiss plaintiff’s Second Cause of Action in the complaint against defendant WDF alleging claims of negligent hiring, retention and entrustment against defendant

WDF; gross negligence and willful conduct, as well as any and all claims for punitive damages against both defendants is granted.

Accordingly, it is

ORDERED that defendants' motion to dismiss plaintiff's Second Cause of Action in the complaint against defendant WDF alleging claims of negligent hiring, retention and entrustment against defendant WDF; gross negligence and willful conduct, as well as any and all claims for punitive damages against both defendants is granted; and it is further

ORDERED that within 30 days of entry, defendants shall serve a copy of this Decision/Order upon all parties with notice of entry; and it is further

This Constitutes the Decision/Order of the Court.

7/1/19  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: