Adinyayev v Ryder Truck Rental, Inc.
2020 NY Slip Op 34330(U)
December 3, 2020
Supreme Court, Kings County
Docket Number: 508107/2019
Judge: Richard Velasquez

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3rd day of December, 2020

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

----------X

VITALIY ADINYAYEV,

Plaintiff,

-against-

Index No.: 508107/2019
Decision and Order

RYDER TRUCK RENTAL, INC., DOW JONES & COMPANY, INC., and FAUSTO PROANO,

Defendants,

----------X

The following *papers NYSCEF* Doc #'s 10 to 54 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	10-16; 20-32
Opposing Affidavits (Affirmations)	34, 49
Reply Affidavits	53-54

After having heard Oral Argument on SEPTEMBER 30, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves pursuant to 3212 for summary judgment on liability. (MS#1). Defendant RYDER TRUCK RENTAL, INC. moves for summary judgment alleging the Graves Amendment applies. (MS#2).

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to

demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id*. The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Zuckerman v. City of New York,* 49 NY2nd 557 [1990].) Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v.Algaze,* 84 N.Y.2d 1019 [1995]).

It is well established "the right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers" (*see* CPLR 3212[g]; *Jung v. Glover,* 169 AD3d 782, 783, 93 NYS3d 390; *Phillip*

v. D & D Carting Co., Inc., 136 AD3d 18, 24–25, 22 NYS3d 75; *Anzel v. Pistorino,* 105 AD3d 784, 786, 962 NYS2d 700; *Medina v. Rodriguez,* 92 AD3d 850, 850, 939 NYS2d 514; *Garcia v. Tri–County Ambulette Serv.,* 282 AD2d 206, 207, 723 NYS2d 163; *Silberman v. Surrey Cadillac Limousine Serv.,* 109 AD2d 833, 833–834, 486 NYS2d 357). Here, the plaintiff made a prima facie showing of entitlement to summary judgment on their motion (*see generally Alvarez v. Prospect Hosp.,* 68 NY2d 320, 324, 508 NYS2d 923, 501 NE2d 572). It is uncontested that the injured plaintiff was a passenger seated in co-defendant's vehicle. Neither driver suggested that the injured plaintiff bore any fault in the happening of the accident (*see Phillip v. D & D Carting Co., Inc.,* 136 AD3d at 25, 22 NYS3d 75), *quoting Romain v. City of New York,* 177 AD3d 590, 591, 112 NYS3d 162, 164 (2d Dep't 2019). Plaintiff in the present case is an innocent passenger is entitled to summary judgment on the issue of liability to the extent that they are not liable for the happening of the accident. (MS#1).

Next, the Court shall address Defendant RYDER TRUCK RENTAL, INC. motion for summary judgment alleging the Graves Amendment applies.

49 U.S.C. §30106 Graves Amendment

Pursuant to 49 U.S.C. §30106 Graves Amendment; "(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).” 49 U.S.C.A. § 30106 (West).

In the present case the Defendant RYDER TRUCK RENTAL, INC. moves for summary judgment contending the Graves Amendment applies and that they have made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that it was an “owner (or an affiliate of the owner) . . . engaged in the trade or business of renting or leasing motor vehicles” (49 USC § 30106 [a] [1]). Defendant further contends since there are no allegations of negligence or wrongdoing on its part, they are entitled to dismissal of the complaint insofar as asserted against it (*see* 49 USC § 30106; *Graham v Dunkley*, 50 AD3d 55, 58 [2008]; *see also Graham v Dunkley*, 50 AD3d at 58). Rivera, J.P., Dillon, Florio and Balkin, JJ., concur. *Gluck v. Nebgen*, 72 A.D.3d 1023, 1023–24, 898 N.Y.S.2d 881 (2010).

Defendant further contends there are no allegations of negligent maintenance against them and as such they do not have to provide any maintenance records in summary of this summary judgment motion. Contrary to defendant contentions

Paragraph 32 of the plaintiffs complaint alleges the following;

> “32. **That Defendants were negligent, careless and reckless in the ownership, operation, management, maintenance, supervision, care and control of his motor vehicle”**

There are allegations of negligent maintenance.

Defendant also contends that pursuant to the lease the Co-Defendant's were solely responsible for all maintenance of the leased vehicle. However, Defendant RYDER proffers a Truck Leasing and Service Agreement (TLSA) dated May 28, 2004, and various amendments and schedules attached to said TLSA. In Paragraph 2A of said TLSA, it states that Defendant RYDER shall be responsible for the maintenance of

the leased vehicle and that Co-Defendant's shall not be allowed to the have the leased vehicle serviced by any other party without Defendant RYDER's consent.

Although defendant RYDER submitted documentary evidence establishing that it was engaged in the business of renting/leasing vehicles and that the subject vehicle had been rented to at the time of the accident, defendant RYDER failed to conclusively establish that it was not negligent in the maintenance of the vehicle, as alleged (*see Olmann v. Neil,* 132 AD3d 744, 18 NYS3d 105; *cf. Pedroli v. Mercedes–Benz USA, LLC,* 94 AD3d 842, 843, 944 NYS2d 150; *Hernandez v. Sanchez,* 40 AD3d 446, 447, 836 NYS2d 577); quoting, *Antoine v. Kalandrishvili*, 150 AD3d 941, 942, 56 NS3d 142, 144 (2017). In the present case, the defendant has not submitted any maintenance record of said vehicle establishing it was maintained in good working condition. Moreover, there are no maintenance records attached and where a leasing company fails to submit admissible evidence to demonstrate the accident was not caused by the condition of the vehicle, as a consequence of its negligent failure to maintain, the motion must be denied. Finally, no discovery has taken place in this matter and summary judgment is premature.

Accordingly, Plaintiff's motion for summary judgment on the issue of liability is hereby granted to the extent that they are not liable for the happening of the accident.(MS#1). Defendants motion for summary judgment is hereby denied. (MS#2)

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
December 3, 2020

HON. RICHARD VELASQUEZ