

Bois v PV Holding Corp.
2021 NY Slip Op 33012(U)
December 16, 2021
Supreme Court, Richmond County
Docket Number: Index No. 150892/2021
Judge: Wayne M. Ozzi
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: DCM PART 23

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KAPEDJANIE BOIS,

Plaintiff,

Index No. 150892/2021

Decision and Order

-against

PV HOLDING CORP. and JOHAN EZRA

SENTANA,

Defendants.

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Ozzi, J.

By motion dated August 30, 2021, Defendant PV Holding Corp. (“PV Holding”) moves this Court for a Order dismissing the instant action on grounds of forum non conveniens pursuant to CPLR 327 and for summary judgment on the grounds that defendant is not a proper party to the action as it is immune from claims of vicarious liability pursuant to the Graves Amendment. 42 U.S.C. 30106. Plaintiff and Defendant Johan Ezra Sentana (“Sentana”) oppose PV Holding’s motion.

The instant matter arises from an automobile accident which occurred on May 5, 2018 when the vehicle driven by Defendant Johan Ezra Sentana, a resident of Tennessee, rear ended the vehicle driven by Plaintiff, a resident of Rhode Island. The vehicle that was operated by Sentana was owned by Defendant PV Holding Corp (“PV Holding”), a Pennsylvania corporation.

PV Holding's motion to dismiss the instant action based on forum non conveniens is denied. The doctrine of forum non conveniens "permits a court to dismiss an action when, although it may have jurisdiction over a claim, the court determines that 'in the interest of substantial justice the action should be heard in another forum.'" National Bank & Trust Co. of N. Am. v. Banco De Viscaya, 72 N.Y.2d 1005, 1007 (1988), quoting CPLR 327(a). The burden is on the moving party to demonstrate that relevant public or private interest factors militate against a New York court's acceptance of the action. Wild v. University of Pennsylvania, 115 A.D.3d 944 (2d Dept 2014). When making its determination, the Court must weigh the following factors: (1) the residency of the parties, (2) the potential hardship to witnesses, "including, especially nonparty witnesses" (Wild v. University of Pennsylvania, *supra* at 945), (3) the availability of an alternate forum; (4) the situs of the events underlying the instant action, (5) the location of evidence, (6) the burden that retaining the case would impose upon New York courts. Islamic Republic of Iran v. Pahlavi, 62 N.Y.2d 474 (1984); *see also* Wild v. University of Pennsylvania, *supra*; Turay v. Beam Bros. Trucking, Inc., 61 A.D.3d 964, 966 (2d Dept 2009).

In the matter presently before the Court, a weighing of the above factors militates against dismissing the matter on grounds of forum non conveniens. *See* Coelho v. Grafe Auction Co., 128 A.D.3d 615 (2d Dept 2015). First, none of the parties reside in the same jurisdiction. Plaintiff is a resident of Rhode Island, Defendant Sentana is a resident of Tennessee, and Defendant PV Holding Corp is a Pennsylvania Corporation. None of the parties have connections to each others' respective domiciles. However, Defendant PV Holdings is registered to do business in New York and, as Plaintiff points out, New York is the most convenient forum for parties residing in the three different states, there being over 1,000 miles between Rhode Island and Tennessee and 600 miles between Rhode Island and Pennsylvania. *See* Plaintiffs

Opposition p. 6. Thus, the first and third factors weigh in favor of keeping the matter in New York.

Similarly, the second, fourth and fifth factors militate against dismissing the matter on grounds of forum non conveniens. The accident underlying this action took place in Staten Island, New York. The police report and the police officer witness who arrived to the scene of the accident are both located in New York. As stated above, the Court must weigh the potential hardship to proposed witnesses, especially nonparty witnesses. See Seung-Min Oh v. Gelco Corp., 257 A.D.2d 385 (1st Dept 1999) (New Jersey rather than New York the appropriate forum for litigating action arising from automobile accident where the accident took place in New Jersey and most relevant nonparty witnesses, including police officers were located in New Jersey). Finally, Defendant PV Holding has failed to demonstrate that trying this matter in New York would impose a substantial burden on the Courts where, as here, the situs of the accident, the location of the police report, and the non-party witness are all located within the state.

Turning to Defendant's motion for summary judgment, under New York law, the negligence of the operator of a motor vehicle is imputed to its owner where the use or operation of the automobile was permissive on the part of the owner. VTL 388. Thus, where the negligence of the operator of a motor vehicle is established, the owner of the vehicle is vicariously liable for same. However, under the Safe, Accountable, Flexible, Efficient Transportation Equity Act (the "Graves Amendment"), codified by 49 U.S.C. 30106, "an owner of a rental vehicle and their affiliates shall not be liable under state law for harm to persons or property resulting from the use, operation or possession of the vehicle during the rental period."

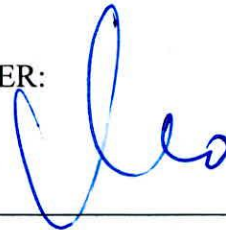
Thus, the Graves Amendment specifically preempts state vicarious liability laws regarding owners of motor vehicles engaged in the business of renting or leasing those motor

vehicles. Here, PV Holding has made a prima facie showing to summary judgment as it has demonstrated with sufficient evidence that it was engaged in the business of leasing motor vehicles and that the vehicle was being operated pursuant to a rental agreement, and that it was not negligent with regard to the subject accident.

Accordingly, PV Holding's motion for summary judgment is granted and the Plaintiff's complaint against PV Holding is dismissed. The foregoing constitutes the decision and Order of the Court.

Dated: December¹⁶, 2021

ENTER:



HON. WAYNE M. OZZI, J.S.C.