

Guzman v Inoa

2022 NY Slip Op 33606(U)

October 13, 2022

Supreme Court, New York County

Docket Number: Index No. 150659/2017

Judge: James G. Clynnes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X

MICHAEL GUZMAN,

Plaintiff,

- v -

EDWIN INOA, PV HOLDING CORP.,

Defendant.

-----X

PV HOLDING CORP.

Plaintiff,

-against-

LUIS MELO

Defendant.

-----X

INDEX NO. 150659/2017
MOTION DATE 11/01/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595613/2019

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 78 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is hereby ordered that defendants' motion for an order dismissing the complaint against defendant Edwin Inoa (Inoa); granting summary judgment in favor of defendant PV Holding Corp. (PV Holding) and dismissing the complaint against it pursuant to the Graves Amendment; and granting summary judgment in favor of defendants on the grounds that plaintiff failed to satisfy the serious injury threshold is decided as follows.

Plaintiff seeks recovery for injuries allegedly sustained as a result of a motor vehicle accident that occurred on February 26, 2016, between a motor vehicle owned by PV Holding and operated by Inoa, wherein plaintiff Michael Guzman was a passenger, and a motor vehicle owned and operated by Luis Melo.

Defendant contends that because plaintiff did not file proof of service with the Court, service is not complete against Iona. CPLR 308 (2) provides that

“service” constitutes delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served ... proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing ... service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service ...

(CPLR 308 [2]).

When notice is defective, the fact that the party received actual notice does not serve to cure the defect. (*Feinstein v Bergner*, 48 NY2d 234 [1979]). “[A]ctual notice alone will not sustain ... service or subject a person to the court’s jurisdiction when there has not been compliance with prescribed conditions of service.” *Kostelanetz & Fink, L.L.P. v Hui Qun Zhao*, 180 Misc. 2d 847, 851, 694 N.Y.S.2d 285, 288 (Civ Ct NY County 1999). The CPLR clearly states that service shall not be complete until ten days after proof of service is filed with the Court. Failure to file proof leads to incomplete service. Any actual knowledge on the part of a defendant of the suit cannot serve to remedy plaintiff’s mistake.

Here, plaintiff submits that Inoa was properly and timely served pursuant to CPLR 308 (2) with service on a person of a suitable age at the defendant’s dwelling place and mailed to his last known address. However, plaintiff failed to complete the third step by filing the proof of service to the court as outlined in CPLR 308 (2). Plaintiff concedes that he did not file the affidavit of service with the court until January 2022, five years after Inoa was purportedly served in January 2017.

Plaintiff attributes the cause of the delay to law office failure. Although the court has discretion to accept law office failure as a reasonable excuse, a claim of law office failure should be supported by a detailed and credible explanation of the default at issue. (*Galaxy Gen. Contr. Corp. v. 2201 7th Ave. Realty Llc*, 95 A.D.3d 789 [1st Dept 2012]). Plaintiff did not provide any additional detail and as such, the excuse of law office failure is unpersuasive. Regardless of whether Inoa had actual knowledge of the proceedings, service of process to him was incomplete and therefore defective. The time to serve him has lapsed. As such, the motion to dismiss the Complaint against Inoa is granted for failure to file the affidavit of service.

Defendant also moves for summary judgment dismissing the complaint against PV Holding pursuant to CPLR 3212 and the Graves Amendment (46 USC 30106).

The Graves Amendment bars vicarious liability actions against professional lessors and renters of vehicles, as would otherwise be permitted under Vehicle and Traffic Law 388. Absent some evidence of a lessor's failure to properly maintain a vehicle which it has expressly agreed to maintain pursuant to a lease agreement, or some similar active negligence on the part of the lessor, 49 USC 30106 (a) (2) the negligence clause of the Graves Amendment, is rarely applicable and should be cautiously applied in light of Congress' clear intent to forestall suits against vehicle leasing companies. See *Hernandez v. Sanchez*, 40 A.D.3d 446 [1st Dept 2007]; *Collazo v MTA-New York City Tr.*, 74 A.D.3d 642 [1st Dept 2010].

Here, it is undisputed that PV Holding is in the business of acting as nominee titleholder on behalf of an affiliate company, which is in the business of renting vehicles. It is also undisputed that the subject rented vehicle was operated by a person who was not employed by defendant at the time of the accident. Plaintiff's submission does not oppose this portion of defendants' motion, therefore no issue of fact has been raised. Accordingly, defendant's motion to dismiss this action against PV Holding pursuant to the Graves Amendment is granted.

Because the action is dismissed against both defendants, the court need not determine the merits of defendants' motion for summary judgment and dismissal of the complaint on the grounds that plaintiff cannot establish that his alleged injuries satisfy the serious injury threshold within the meaning of Insurance Law 5102 (d) and that portion of the motion is denied as moot.

Accordingly, it is

ORDERED that defendants' motion to dismiss plaintiff's complaint against defendant Edwin Inoa for lack of personal jurisdiction is granted; and it is further

ORDERED that defendants' motion for summary judgment dismissing the complaint against Defendant PV Holding Corp pursuant to the Graves Amendment and CPLR 3212 is granted; and it is further

ORDERED that the portion of defendants' motion seeking summary judgment and dismissal of the complaint based on the serious injury threshold is denied as moot; and it is further

ORDERED that the complaint is dismissed in its entirety as against said defendants, and the Clerk is directed to enter judgment accordingly in favor of defendants; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General

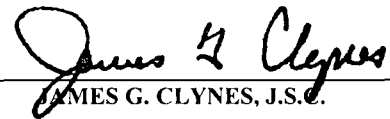
Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein.

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the Decision and Order of the Court.

10/13/2022

DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE