

Tyler v Motor Veh. Acc. Indem. Corp.

2023 NY Slip Op 31732(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 161860/2015

Judge: James G. Clynes

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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

TRACY TYLER,

Plaintiff,

- v -

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION, JOHN DOE, ABC CORPORATION,

Defendant.

-----X

INDEX NO. 161860/2015

MOTION DATE 01/27/2020,
01/27/2020

MOTION SEQ. NO. 003 003

**DECISION + ORDER ON
MOTION**

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION

Plaintiff,

-against-

LUIS SANCHEZ, EXTASEA CAB CORP, TINA TAXI SERVICE,
QUEENS MEDALLION BROKERAGE

Defendant.

Third-Party
Index No. 595998/2017

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for

AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and following oral argument, the motion by Third-Party Defendants Luis Sanchez and Extasea Cab. Corp. to amend their answer to the Third-Party Complaint pursuant to CPLR 3025, and upon such amendment granting summary judgment pursuant to CPLR 3212 dismissing the Third-Party Complaint against Defendants Luis Sanchez and EXTASEA Cab. Corp. is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a December 3, 2011 motor vehicle accident between Plaintiff pedestrian and a vehicle that allegedly fled the scene of the accident. Plaintiff moved for leave to sue MVAIC pursuant to Insurance Law 5218, which was referred to a Framed Issue Hearing before a Special Referee. The Special Referee found that Petitioner Taylor met his burden and demonstrated that through reasonable efforts he was not able to ascertain the identity of the driver who injured him. In a November 13, 2015 Decision and Order, the Hon. Debra A. James ruled that the alleged driver and owner of the vehicle involved in the accident did not exist at the address listed on the police report and was not found in the records of the New York Secretary of State and Petitioner Tracy was permitted to commence an action against MVAIC. In a February 16, 2016 Decision and Order, Judge James confirmed the findings of the Special Referee. MVAIC appealed both the November 13, 2015 and February 16, 2016 Decisions and the Appellate Division, First Department affirmed them. In a September 23, 2019 Decision and Order, the Hon. Adam Silvera denied MVAIC's motion for summary judgment ruling that issues of fact exist and that it would be prejudicial to Plaintiff because while the names of the Third-Party Defendants were known to Plaintiff as they were listed in the Police Report, those individuals did not exist at the address listed and as such Plaintiff was left with no one but MVAIC to sue.

While leave to amend a pleading should be freely given absent prejudice or surprise, a court may deny leave to amend when the proposed amendment lacks merit (*Cafe Lughnasa Inc. v A&R Kalimian LLC*, 176 AD3d 523 [1st Dept 2019]; *Verizon NY, Inc. v Consol. Edison, Inc.*, 38 AD3d 391 [1st Dept 2007]).

Here, Third-Party Defendants Sanchez and Extasea seek to assert MVAIC's defense that Plaintiff Tyler did not make reasonable efforts to ascertain the identity of the driver. They submit

that MVAIC will not be surprised or prejudiced because MVAIC uncovered the facts upon which Third-Party Defendants Sanchez and Extasea seek to base their amended complaint contending that MVAIC did not properly raise the issue of Plaintiff's efforts in the prior proceedings, and they may do so now because third-party defendants may raise a defendant's defense to plaintiff's complaint even where it is no longer available to a defendant. They further submit that the evidence in the underlying proceeding showed that Plaintiff could have ascertained the identities of the taxi and the taxi's owner and driver, his petition against MVAIC should have been dismissed, and in turn, the Third-Party Complaint should be dismissed.

In opposition, Plaintiff Tyler contends that the issue of Plaintiff's reasonable efforts to identify the tortfeasor had already been adjudicated in this case and has already been resolved, and that the defense Third-Party Defendants Sanchez and Extasea seek to assert is specific to MVAIC and not available to them.

In opposition to the motion by Third-Party Defendants Sanchez and Extasea, MVAIC contends that Third-Party Defendants have no grounds to add Article 52 defenses because they are not alleged as causes of action in either the Plaintiff's or Third-Party Complaints. MVAIC further contends that in this negligence action, Third-Party Defendants do not stand in MVAIC's shoes but are averse to MVAIC and MVAIC's defense is that of a non-involved party. This Court agrees.

The Third-Party Complaint is not without merit as a matter of law. Plaintiff's noncompliance with Insurance Law Article 52, Section 5218, specifically whether Plaintiff exhausted all reasonable efforts to ascertain the identity of the tortfeasor, is a statutory defense available only to MVAIC (Insurance Law Article 52, Section 5218). These affirmative defenses are unique to MVAIC and are statutory requirements which a claimant must satisfy before permission to sue MVAIC may be granted (NYS Ins Law Article 52, Section 5218). The issues


pertaining to Plaintiff's application for permission to sue MVAIC were resolved in prior litigation. Third-Party Defendants Sanchez and Extasea cannot now stand in MVAIC's shoes and assume those defenses as their own, because the statutory requirements do not apply to them. The motion is denied. Accordingly, it is

ORDERED that the motion by Third-Party Defendants Luis Sanchez and Extasea Cab Corp. for leave to amend their answer to the third-party complaint and for summary judgment dismissing the Third-Party Complaint against Defendants Luis Sanchez and Extasea Cab Corp. is DENIED; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days, Plaintiff shall serve Defendants with a copy of this order with Notice of Entry.

This constitutes the Decision and Order of the Court.

5/23/2023					
DATE			JAMES G. CLYNES, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE