Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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CLARENCE CRUMMELL,
Plaintiff,

Index No.: 1026/08
Motion Date: 3/2/11
Motion Cal. No.: 04
Motion Seq. No.: 4

-against-

AVIS RENT A CAR SYSTEM, INC., et al,

Defendants.

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The following papers numbered 1 to _6_ read on this motion by Plaintiff for an order seeking Reargument of a decision and order granting summary judgment on Defendant Avis' fourth affirmative defense, and upon Reargument why the motion should not be denied.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits- Memo of Law.....	1 - 4
Affirmation in Opposition-	5 - 6

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Plaintiff's motion pursuant to CPLR §2221(d)[1], to reargue the decision and order of the court by the Honorable Patricia Satterfield dated November 12, 2010, which granted defendant Avis Rent A Car System Inc.'s motion for summary judgment on its fourth affirmative defense, is hereby granted, and upon reargument, the Court adheres to the prior decision granting summary judgment.

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[1]CPLR § 2221(a) requires that a motion to renew or reargue a prior motion shall be made to the judge who signed the order, unless she is unable to hear same. In the instant matter, Justice Satterfield had recently retired, and accordingly, is unavailable to determine the motion.

In this action, plaintiff Clarence Crummell ("Plaintiff") seeks to recover for personal injuries allegedly sustained in a motor vehicle accident on June 10, 2006. Plaintiff was a passenger in a vehicle he rented from defendant Avis Rent A Car System Inc. ("Avis"), that was owned by Avis and operated by defendant Thomas Pinkerton (Pinkerton). Avis moved for summary judgment on its fourth affirmative defense asserting that the amount of liability insurance that it must provide in the underlying personal injury action should be limited to the statutory minimum because Pinkerton was not an "authorized driver" as defined in the rental agreement (the "Agreement") between Avis and Plaintiff, as only "authorized drivers" are entitled to additional liability insurance coverage under the terms of the agreement.

In support of the motion for summary judgment, Avis relied upon, *inter alia*, a copy of the agreement and the deposition testimony of the Plaintiff. The Agreement provided that additional liability insurance would be provided as "additional coverage" to an "authorized driver" as defined in the agreement. An "authorized driver" is defined as being limited to a spouse, significant other, employer or regular fellow employee incidental to business duties, someone who operates the vehicle during an emergency, or someone who appears at the rental counter with an authorized driver and signs an additional driver form. The agreement further provides that an "authorized driver" must be at least 25 years old and hold a valid driver's license.

Moreover, Avis, in further support of its motion, relies on the deposition of Plaintiff wherein he testified that he purchased additional liability insurance when he rented the vehicle, that Pinkerton was under the age of 25 at the time that the agreement was signed, and that Pinkerton was not listed as an additional authorized driver in the agreement. Plaintiff was the only individual to sign the agreement.

In the November 12, 2010 order, the Court concluded that "...Pinkerton was not an authorized driver as defined in the agreement. Therefore, Pinkerton as the operator of the vehicle, is not entitled to additional liability insurance coverage in excess of the statutory minimum pursuant to the terms of the agreement."

A motion to reargue allows a party to establish that the court "overlooked or misapprehended the relevant facts" or "misapplied any controlling principle of law," in determining the prior motion. (*Cruz v. Masada Auto Sales, Ltd.*, 41 A.D.3d 417 [2d Dept. 2007].) "The motion does not offer an unsuccessful party successive opportunities to present arguments not previously advanced (citations omitted)." (*Pryor v. Commonwealth Land Title Ins. Co.*, 17 A.D.3d 434 (2d Dept. 2005].). CPLR §2221, and caselaw interpreting that statutory provision, condition a grant of such a motion "upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." In support of its motion to reargue the denial of that branch of the plaintiff's motion for summary judgment on the fourth cause of action, Crummell contends that the Court misapprehended the law. Specifically, the court cited authority inapposite to its holding, specifically *Motor Veh. Acc. Indem. Corp. v Continental Natl. Am. Group Co.*, 3 NY2d 260, 264 [1974] and *Bernstein v Diaz*, 27 AD3d 602, 603 [2006].

The prior Court clearly restated the law, as set forth in *MVAIC* and *Bernstein*, but then quickly distinguished the within action from the abovementioned cases and concluded, based on the unique facts of this case, that the clause in the agreement regarding additional liability insurance expressly provided that such additional coverage would only be provided to an "authorized driver" as defined in the rental agreement.

However, the ruling failed to clearly address the intent of the Court of Appeals in *MVAIC,* wherein the court deemed a car rental agency to have "constructively" consented to a third-party driver's operation of its rental vehicle despite a lease provision restricting use of the vehicle to the lessee and his immediate family. (*Motor Veh. Acc. Indem. Corp. v Continental Natl. Am. Group Co.*, 35 NY2d 260 [1974].) Specifically, "a commercial lessor of vehicles is deemed to have "constructively consented to the operation of its vehicle by anyone with the lessee's permission." (*Bernstein -v- Diaz*, 27 AD 2d 602, 603). Pursuant to this principle of constructive consent, a car rental agency is subject to statutory liability under Vehicle and Traffic Law §388 for the permissive use of its vehicle. (*Murdza v. Zimmerman*, 99 N.Y.2d 375 [2003] citing *Motor Veh. Acc. Indem. Corp. v Continental Natl. Am. Group Co.*, 35 NY2d 260 [1974].) To do otherwise, the Court of Appeals in *MVAIC* argued, innocent victims would have no redress given the large number of rental cars, many of which are driven by someone other than the renter, would "inevitably" be involved in accidents. (*Id.*)

The defendant, concedes that VTL §311 requires AVIS, as the owner of the rental vehicle, to provide New York's mandatory minimum insurance coverage of $25,000 per person/$50,000 per accident to any "permissive user" as defined by VTL §388. Defendant contends, however, that *MVAIC*'s ruling does not extend to "additional coverage," as the public policy concerns underpinning the ruling in MVAIC do not exist here.

This court notes that the "innocent victims" *MVAIC* considered are still covered under the statutory requirements and have their redress. The "additional coverage" provided for in the within rental agreement goes above and beyond the statutory requirements and therefore there is no "public policy" concern as set forth in *MVAIC*.

As the prior court concluded "[a] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]; *see Lobacz v Lobacz*, 72 AD3d 653, 654 [2010]). The parties to the agreement contracted to "additional coverage" pursuant to the rental agreement provisions and innocent victims could not properly assume that other motorists would have "additional coverage." If that were the case, the legislature would have required that all rental companies provide "additional coverage." Absent a "public policy" concern that would warrant ignoring the plain meaning of the terms of the parties agreement, this court sees no reason to extend the ruling in *MVAIC* to include "additional coverage, as "additional coverage" is not statutorily mandated. So long as the contract does not run afoul of the Vehicle and Traffic Law § 338 and the statutory minimum is available, the parties are free to limit the additional coverage. (*cf. Government Employees Inc. Co. -v- Chrysler Inc. co.*, 256 AD2d 1212 [4th Dept. 1998].)

Accordingly, the motion to reargue is granted and after reargument, the court adheres to the prior decision and summary judgment is granted defendant Avis on the fourth affirmative defense.

This constitutes the decision and order of this court.

Dated: April 25, 2011

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Bernice D. Siegal, J. S. C.