

Paulino v Amerco

2012 NY Slip Op 33695(U)

November 1, 2012

Supreme Court, Westchester County

Docket Number: 57220/2012

Judge: Mary H. Smith

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DECISION AND ORDER

FILED & ENTERED

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To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

-----X
JAMES PAULINO,

Plaintiff,

MOTION DATE: 10/26/12
INDEX NO.: 57220/12

-against-

AMERCO, U-HAUL INTERNATIONAL, INC., U-HAUL CO.
OF ARIZONA and STEVEN SANCHEZ,

Defendants.

-----X

The following papers numbered 1 to 13 were read on this motion by defendants Amerco, U-Haul International, Inc. and U-Haul Co. Of Arizona for an Order pursuant to CPLR 3211, subdivision (a), paragraphs 1 and 7, dismissing the complaint.

Papers Numbered

Notice of Motion - Affirmation (Waxman) - Exhs. (A-D) -	
(Settles, Turcotte) - Exhs. (1-2) - Affidavit (Sonberg) -	
Memorandum of Law	1-9
Answering Affirmation (Kestenbaum)	10
Replying Affirmation (Waxman) - Exhs. (A-C) - Memorandum of	
Law	11-13

Upon the foregoing papers, it is Ordered and adjudged that this motion by defendants Amerco, U-Haul International, Inc. and U-

Haul Co. Of Arizona (collectively defendants "Amerco") for an Order pursuant to CPLR 3211, subdivision (a), paragraphs 1 and 7 dismissing the complaint is disposed of as follows:

Plaintiff seeks to recover damages for personal injuries he allegedly had sustained as a result of an automobile collision that had occurred, on July 29, 2011, in Yonkers, on Prescott Street, when a U-Haul rental truck, owned by defendants Amerco and driven by defendant Sanchez, had sideswiped plaintiff's vehicle. Plaintiff has pleaded three causes of action for negligence in the operation and ownership of the offending vehicle, negligent entrustment, and negligent hiring, training and supervision.

Presently, defendants Amerco are moving to dismiss the complaint, arguing that plaintiff's first cause of action, which is premised on vicarious liability, necessarily fails because same is barred by the Graves Amendment, 49 U.S.C. §30106. With respect to defendants Amerco and U-Haul International, Inc., defendants further argue that neither had owned the subject offending vehicle nor had leased any vehicles to the public on July 29, 2011.

Moving defendants additionally argue in support of dismissal that the negligent entrustment cause of action fails because plaintiff does not and cannot allege that defendants Amerco had failed to check defendant Sanchez's driver's license prior to renting the vehicle to him and there is no evidence supporting any

finding that a specific condition or characteristic of Sanchez had created an unreasonable risk of harm or injury to others, or that defendants had knowledge of such.

Finally, defendants Amerco argue that the third cause of action pleading negligent hiring, training and supervision fails because defendant Sanchez, the vehicle's lessee, was not and is not an employee of defendant Amerco.

In opposition, plaintiff makes no opposing arguments with respect to the Graves Amendment requiring dismissal of the first cause of action, nor with respect to the sufficiency of defendants Amerco's proof that defendant Sanchez was not an employee of said defendants. Rather, he merely explains that plaintiff had the right to understand the relationship between defendants and whether Sanchez was an employee of U-Haul. With respect to his claim for negligent entrustment, plaintiff merely argues that he should be allowed to depose Sanchez "about his appearance, condition, and his manner when he rented" the subject U-Haul vehicle.

It is well-settled that on a motion to dismiss for failure to state a cause of action, the Court initially must accept the facts alleged in the complaint as true, and then determine whether those facts fit within any cognizable legal theory, giving the plaintiff every benefit of inference. See Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 318 (1995); Leon v. Martinez, 84 N.Y.2d

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83, 87-88 (1994); U.S. Bank National Assn. v. Stein, 81 A.D.3d 927, 928 (2nd Dept. 2011). Where it has been shown that a material fact or facts as claimed by the plaintiff "have been negated beyond substantial question" by the documentary evidence or affidavits and other evidentiary submissions, and/or where the very allegations set forth in the complaint fail to support any cause of action, the complaint should be dismissed. See CPLR 3211, subd. (a), par. 1; DePaulis Holding Corp. v. Vitale, 66 A.D.3d 816, 818 (2nd Dept. 2009); Biondi v. Beekman Hill House Apartment Corp., 257 A.D.2d 76 (1st Dept. 1999), affd. 94 N.Y.2d 659 (2000); Robinson v. Robinson, 303 A.D.2d 234 (1st Dept. 2003).

On a dismissal motion pursuant to CPLR 3211 based upon the documentary evidence, the documents relied upon by the defendant must conclusively establish a defense to the claims asserted as a matter of law. See Ofman v. Katz, 89 A.D.3d 909 (2nd Dept. 2011).

Applying the foregoing standards of law to the action at bar, defendant Amerco's motion for dismissal is fully granted. Defendants Amerco have demonstrated through the submission of affidavits from Jennifer Settles that defendant Amerco and U-Haul International, Inc. both are entitled to dismissal of the complaint because neither had owned nor leased the subject offending vehicle, and neither had employed defendant Sanchez.

Defendants Amerco further have demonstrated their entitlement

to protection under the Graves Amendment. The Graves Amendment provides that "[a]n owner of a motor vehicle that rents or leases the vehicle to a person ... shall not be liable under the law of any state ... by reason of being the owner of the vehicle ... for harm to person or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental r lease, if - (1) 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 ..."

Defendants have submitted an affidavit from Jason Turcotte, vice president of defendant U-Haul Co. of Arizona, and copies of the subject Lease Agreement and the subject vehicle's title and registration demonstrating said defendant's ownership of same. Accordingly, the Graves Amendment bars against the moving defendants plaintiff's first cause of action which pleads vicarious liability based upon the vehicle's ownership. See Pedroli v. Mercedes-Benz USA, LLC, 94 A.D.3d 842 (2nd Dept. 2012); Burrell v. Barreiro, 83 A.D.3d 984 (2nd Dept. 2011).

With respect to the second cause of action pleading negligent entrustment, moving defendants submit an affidavit from Jeffrey Sonberg, president of U-Haul Co. Of New York and Vermont, Inc., an affiliate of defendant U-Haul Co. of Arizona, wherein he avers that U-Haul of New York and Vermont, Inc. had verified at the time of

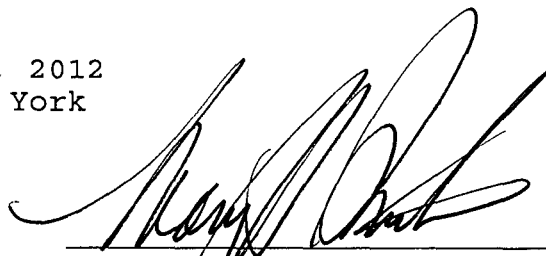
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rental on July 29, 2011, that defendant Sanchez had a facially valid driver's license, and notably defendant Sanchez's license number and expiration date appear on the rental agreement. Based upon the foregoing, as well as plaintiff's failure to have made any complaint allegations that defendant U-Haul Co. Of Arizona had any special knowledge concerning any characteristic of or condition peculiar to defendant Sanchez that had rendered his lease of the vehicle unreasonably same, moving defendants are entitled to dismissal of this cause of action too. See Burrell v. Barreiro, supra, 83 A.D.3d at 985-986; Byrne v. Collins, 77 A.D.3d 782, 784 (2nd Dept. 2010). Plaintiff's mere hope that discovery will yield evidence to support his claim is insufficient to interdict defendants' entitlement to dismissal. See Varveris v. Hermitage Ins. Co., 24 A.D.3d 537 (2nd Dept. 2005); Mandarin Trading Ltd. v. Wildenstein, 17 Misc.3d 1118(A) (Sup. Ct. N.Y. Co. 2007).

Finally, the Court dismisses the third cause of action pleading negligent hiring, training and supervision because the affiants at bar consistently affirm that defendant Sanchez had not been an employee of any defendants Amerco.

This action is hereby severed and Ordered continued. The parties shall appear in the Preliminary Conference Part, at 9:30 a.m., on November 26, 2012.

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Dated: November 1, 2012
White Plains, New York



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