

Chavez v JVK Enters. Ltd.

2014 NY Slip Op 33804(U)

October 1, 2014

Supreme Court, Nassau County

Docket Number: 601241/2012

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

_____x

**TRIAL/IAS, PART 40
NASSAU COUNTY**

GILBERTO CHAVEZ,

Plaintiff(s),

Index No. 601241/2012

-against-

**Motion Seq. No.: 002
Motion Submitted: 9/3/14**

**JVK ENTERPRISES LIMITED, RYDER
TRUCK RENTAL, INC. and JULIO GARCIA
Defendant(s).**

_____x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X

Defendant, Ryder Truck Rental, Inc. (Ryder), moves this court, pursuant to CPLR § 2221, for an order granting reargument of this court’s prior order dated June 3, 2014.

Plaintiff filed a Summons and Complaint on July 3, 2012 seeking damages related to a car accident. Issue was joined and an Answer was filed on behalf of all Defendants on or about September 21, 2012.

On April 20, 2012 on New Highway, Amityville, County of Suffolk, Defendant Julio Garcia (Garcia) was driving a truck owned by Ryder and leased by Defendant JVK Enterprises Limited (JVK). Garcia worked as a driver for JVK. As Garcia was making a left to turn into a

driveway on New Highway, Plaintiff's vehicle, traveling southbound, collided with Garcia's vehicle. Garcia alleges he was injured as a result of the accident.

In Ryder's original summary judgment motion, it claimed it was entitled to summary judgment due to the protection offered owners of leased vehicles by 49 USC §30106, also known as the Graves Amendment. The Graves Amendment states, in pertinent part:

An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if--

(1) the owner (or an affiliate of 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 (or an affiliate of the owner). 49 U.S.C.A. 30106

A motion for leave to renew or reargue is addressed to the sound discretion of the Supreme Court (see *Matter of Swingearn*, 59 AD3d 556 [2d Dept. 2009]). A motion for renewal "shall be based upon new facts not offered on the prior motion that would change the prior determination" (CPLR § 2221[e] [2]). A motion for reargument must be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR § 2221[d][2]). It is not designed, however, to provide an unsuccessful party with successive opportunities to re-litigate the issues previously decided (see *Foley v. Roche*, 68 AD2d 558, 567 [1st Dept. 1979]), or to present arguments different from those originally tendered (see *Giovanniello v.*

Carolina Wholesale Off. Mach. Co., Inc., 29 AD3d 737, 738 [2d Dept. 2006]).

Pursuant to CPLR § 2221(d)(3) a motion for reargument "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry". There is no statutory limit to the time within which a litigant can file a motion to renew based upon facts not offered on the prior motion that would change the prior determination pursuant to CPLR § 2221[e]. While Ryder's motion herein was timely filed, the Supreme Court has jurisdiction to reconsider its prior order "regardless of statutory time limits concerning motions to reargue" (*Liss v Trans Auto Sys.*, 68 NY2d 15, 20 [1986]; see *Aridas v Caserta*, 41 NY2d 1059 [1977]; cf. *Matter of Huie [Furman]*, 20 NY2d 568 [1967]; *Johnson v Incorporated Vil. of Freeport*, 303 AD2d 640 [2d Dept. 2003]).

Ryder argues this court misunderstood or misapplied the law when it found that the Graves Amendment does not shield an owner who rents or leases vehicles where there is an allegation of negligent maintenance in the complaint. The cases relied upon by the court in its prior order support the court's reasoning. See *Terranova v. Waheed Brokerage, Inc.*, 78 A.D.3d 1040 (2nd Dept. 2010); *Collazo v. MTA-New York City Transit*, 74 A.D.3d 642 (1st Dept. 2010)

However, Ryder argues those cases are distinguishable and the court should follow *Bravo v. Vargas*, 113 A.D.3d 579 (2nd Dept. 2014); *Castillo v. Amjack Leasing Corp.*, 84 A.D.3d 1297 (2nd Dept. 2011) and *Ballatore v. HUB Truck Rental Group*, 83 A.D.3d 978 (2nd Dept. 2011).

At first blush, the cases submitted by Ryder and the cases relied upon by the court appear to contradict each other. However, a closer reading shows that Ryder's cases are distinguishable from the case herein. In the prior decision, the court found, relying in *Terranova* and *Collazo*, that the Graves Amendment did not shield Ryder since Plaintiff herein alleged negligent

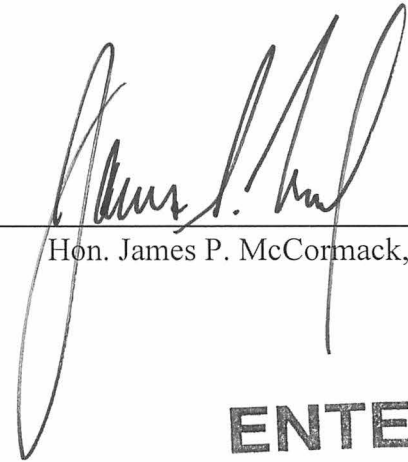
maintenance *in its complaint*. There is no indication in the decisions in *Bravo*, *Castillo* and *Ballatore* that negligent maintenance was an allegation in the complaint. Those cases simply indicated that the defendant established no negligent maintenance, but did not indicate if it was alleged. Negligent maintenance is alleged in the complaint herein, which brings it in line with the *Terranova* and *Collazo* rulings. The court, therefore, finds it properly applied the law in its prior decision.

Accordingly, it is hereby

ORDERED, that Defendant Ryder's motion to reargue this court's June 3, 2014 decision and order is DENIED in its entirety.

This constitutes the decision and order of the court.

Dated: October 1, 2014
Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE