

Moore v Ryder Truck Rental Inc.

2014 NY Slip Op 34033(U)

May 1, 2020

Supreme Court, Bronx County

Docket Number: 28619/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 15

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CORIE L. MOORE and SHANIKA E.
WASHINGTON

Index No. 28619/2018E

-against-

Hon. MARY ANN BRIGANTTI

RYDER TRUCK RENTAL INC., et al.,

Justice Supreme Court

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The following papers numbered 1 to 6 were read on this motion (Seq. No. 001)
for DISMISSAL noticed on January 3, 2020.

| | | |
|--|--------|------|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | No(s). | 1,2 |
| Answering Affidavit and Exhibits | No(s). | 3,4, |
| Replying Affidavit and Exhibits | No(s). | 5,6 |

Upon the foregoing papers, the defendants Ryder Truck Rental, Inc. (“Ryder”), Caravan, Inc., and Robert Rodgers, Jr. (collectively, “Defendants”) move for an order (1) dismissing the complaint of the plaintiffs Corie L. Moore and Shanika E. Washington (“Plaintiffs”) and any cross-claims asserted against Ryder, on the grounds that the claims against Ryder are barred by the Federal Transportation Equity Act of 2005, codified as 49 USCA Sec. 30106, and (2) for the imposition of monetary sanctions for the costs and fees associated with filing the motion. Plaintiff opposes the motion.

Standard of Review

On a motion to dismiss pursuant to this section of the CPLR 3211(a)(7), a court's role is ordinarily limited to determining whether the complaint states a cause of action (*Frank v. DaimlerChrysler Corp.*, 292 AD2d 118 [1st Dept. 2002]). In other words, the determination is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (See *Stendig, Inc. v. Thom Rock Realty Co.*, 163 AD2d 46 [1st Dept. 1990]; *Leviton Manufacturing Co., Inc. v. Blumberg*, 242 AD2d 205 [1st Dept. 1997][on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see, CPLR 3026). The court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as

alleged fit into any cognizable legal theory”(*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). The motion should be denied if, from the pleading's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law (*McGill v. Parker*, 179 AD2d 98 [1st Dept. 1992]).

To be entitled to the “drastic” remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case.” (*Winegrad v. New York University Medical Center*, 64 NY2d 851 [1985]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers. (id., see also *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v. 46th Street Development LLC*, 101 AD3d 490 [1st Dept. 2012]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]). When deciding a summary judgment motion the role of the Court is to make determinations as to the existence of bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 NY3d 499 [2012]). If the trial judge is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied. (*Bush v. Saint Claire's Hospital*, 82 NY2d 738 [1993]).

Applicable Law and Analysis

“Under the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable ‘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)’ (see *Villa-Capellan v. Mendoza*, 135 A.D.3d 555 [1st Dept. 2016], citing 49 U.S.C. §30106); *Jones v. Bill*, 10 N.Y.3d 550 [2008], cert dismd 555 U.S. 1028, 129 S.Ct. 593, [2008]).

In this case, Ryder failed to carry its initial burden to show prima facie entitlement to summary judgment and/or dismissal of the claims against it. Ryder alleges in an affirmation from counsel that Ryder is merely a commercial lessor thus claims against it are barred pursuant to the Graves Amendment. However, Defendants have submitted no admissible evidence in support of their motion establishing this

fact, prima facie, and they not allege that the Court may take judicial notice of Ryder's business practices. Without such competent proof, Ryder has failed to carry its initial summary judgment burden of demonstrating that Plaintiffs' claims against it are barred by the Graves Amendment (*see Cassidy v. DCFS Trust*, 89 A.D.3d 591 [1st Dept. 2011]; CPLR 3212[b]).

In addition, the Graves Amendment does not apply where a plaintiff seeks to hold the defendant-owner liable for its own negligence (*see Collazo v. MTA–New York City Tr.*, 74 A.D.3d 642 [1st Dept. 2010]). Plaintiff's complaint alleges, *inter alia*, that the defendants were negligent in their maintenance, use and control of the subject vehicle and caused this collision to occur (Pl. Complaint at ¶15, 49). Defendants' moving papers fail to provide any admissible evidence demonstrating that Ryder was not responsible for the maintenance of the subject vehicle. Defendants thus failed to carry their prima facie burden of eliminating all triable issues of fact with respect to these allegations (*see Olmann v. Neil*, 132 A.D.3d 744 [2nd Dept. 2015]; *Nelson v. Citiwide Auto Leasing, Inc.*, 154 A.D.3d 863, 865 [2nd Dept. 2017], *cf. Villa-Capellan v. Mendoza*, 135 A.D.3d 555). While the motion references the deposition testimony of defendant Robert A. Rodgers, the transcript is not attached to the moving papers. The motion is therefore denied without consideration of Plaintiff's opposing papers (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). As a result, Defendants' motion for the imposition of monetary sanctions is also denied.

The exhibits annexed to Defendants' reply papers cannot be considered. Defendants could not cure their failure to satisfy their initial summary judgment burden by submitting new evidence in reply, because Plaintiff had no opportunity to respond to those submissions. "The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds [or evidence] for the motion" (*see Kennelly v. Mobius Realty Holdings LLC*, 33 A.D.3d 380 [1st Dept. 2006]; quoting *Dannasch v. Bifulco*, 184 A.D.2d 415, 417 [1st Dept. 1992]). "This rule is generally employed in the context of summary judgment motions to prevent a movant from remedying basic deficiencies in its prima facie showing by submitting evidence in reply, thereby shifting to the non-moving party the burden of demonstrating the existence of a triable issue of fact at a time when that party has neither the obligation nor opportunity to respond" (*id.* [internal citations omitted]).

Conclusion

Accordingly, it is hereby

ORDERED, that Defendants' motion to dismiss, and for the imposition of monetary sanctions, is denied.

This constitutes the Decision and Order of this Court.

Dated:

5/1/20

Hon.

Mary Ann Brizuela
J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT