

Anchundia v Ortiz

2015 NY Slip Op 31028(U)

May 18, 2015

Supreme Court, Bronx County

Docket Number: 304638/13

Judge: Julia I. Rodriguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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Luis Anchundia,
Plaintiff,

DECISION and ORDER

-against-

**Index No. 304638/13
Action No. 1**

Anselmo Ortiz, Aaron Garret, Elrac, LLC,
Diana Narvaez, Ana M. Narvaez-Ortiz and
Ismael Hernandez,

Defendants.
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Ismael Hernandez,
Plaintiff,

-against-

**Index No. 24281/13
Action No. 2**

Diana Narvaez, Ana Narvaez-Ortiz,
Aaron Garret, Elrac, LLC and
Anselmo Ortiz,

Present:

Defendants.
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Hon. Julia I. Rodriguez
Supreme Court Justice

Recitation, as required by CPLR 2219(a), of the papers considered in review of defendant Elrac, LLC ("Elrac")'s motion for summary judgment pursuant to 49 U.S.C. §30106.

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1
Plaintiff Anchundia's Affirmation in Opposition	2
Def. Narvaez, Narvaez-Ortiz and Garret's Affirmations in Opposition	3,4,5

These consolidated actions arise out of a motor vehicle accident that occurred on August 14, 2011 wherein Plaintiffs Anchundia and Hernandez allegedly sustained injuries. The motor vehicle operated by Defendant Garret ("the subject vehicle") was leased to him by Defendant Elrac. Elrac now moves for summary judgment, dismissing the complaint as against Elrac, claiming (1) lack of ownership of the subject vehicle and (2) that the claims against Elrac are barred by U.S.C. §30106 ("the Graves Amendment"). Alternatively, Elrac asserts that the

parties should be compelled to complete EBT's of all parties by a date certain, and if EBT's have not been held by then, Elrac should be granted leave to renew and any party in opposition should be precluded from arguing that the motion is premature.

In support of the motion, Elrac submitted, *inter alia*, the affidavit of Michael DeBlasio, Elrac's Risk Management Supervisor, with attached Certificate of Title and the first page of a four-page rental contract regarding Garrett's rental of the subject vehicle. At the outset, the court notes that DeBlasio's affidavit is not in admissible form as it was executed in the state of New Jersey and it is not accompanied by a certificate of conformity as required by CPLR §2309(c). In his affidavit, DeBlasio states that he is familiar with Elrac's business practices and has reviewed the company's business records relating to the subject vehicle. DeBlasio further states that Elrac is a business organized and operated to rent motor vehicles to the general public. According to DeBlasio, on August 1, 2011, Elrac rented the subject motor vehicle to Garrett in the regular course of its business activities. The subject vehicle, DeBlasio states, was owned by EAN Holdings, LLC, an affiliate of Elrac, at the time it was rented to Garrett and used exclusively as a rental vehicle on behalf of the business of Elrac. DeBlasio states that Garrett was not an employee of Elrac on either the date of the accident or the date the vehicle was rented. Upon a search of Elrac's records, DeBlasio states, he found that "immediately prior to the subject rental, the rental vehicle was brand new to the fleet of rental vehicles owned by Elrac and thus was not scheduled to undergo any maintenance work at the time of the accident nor were there any prior mechanical issues with the vehicle." The rental contract indicates that Aaron Garrett rented the subject vehicle on August 1, 2011 at 5:01 p.m. and that the vehicle was to be returned by August 8, 2011 at 5:00 p.m. The Certificate of Title, issued on May 9, 2011, lists EAN Holdings LLC as the owner of a black, four-door, 2012 Ford Focus bearing VIN 1FAHP3H29CL146914. Notably, neither the year nor VIN of the vehicle is indicated on the page of the rental contract submitted by DeBlasio.

Plaintiff Anchundia and Defendants Narvaez, Narvaez-Ortiz, Hernandez and Garrett oppose the motion essentially arguing that it is premature because the depositions of the defendants have not be conducted. These parties contend that discovery is necessary to

determine whether there is an issue of fact as to Elrac's negligent maintenance of the subject vehicle, which would negate Elrac's claim of immunity from suit under the Graves Amendment.

While Elrac contends that the claims against Elrac are based upon Vehicle and Traffic Law §388(1) which imposes vicarious liability on *owners* of vehicles, neither of the complaints reference the Vehicle and Traffic Law. Rather, the allegations against Elrac are premised on its negligence in its "control, operation, ownership and maintenance" of the subject vehicle. As such, Elrac is not entitled to summary judgment based on its lack of ownership of the subject vehicle.

The Graves Amendment provides, in pertinent part:

Rented or leased motor vehicle safety and responsibility

(a) In general. 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).

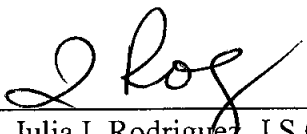
Consequently, if there is no negligence on the part of an automobile rental company, that company is not vicariously liable to a motorist injured in a collision with a rented vehicle.

Therefore, if Elrac was negligent in its maintenance of the subject vehicle, as alleged, Elrac is not immune from suit under the Graves Amendment. Since the examination before trial of Garrett, who could provide information as to whether the vehicle was malfunctioning at the time of the accident, has not yet taken place, the court finds the instant motion to be premature. *See Collazo v. MTA - New York City Tr.*, 74 A.D.3d 642, 905 N.Y.S.2d 30 (1st Dept. 2010); *Terranova v. Waheed Brokerage, Inc.*, 78 A.D.3d 1040, 912 N.Y.S.2d 253 (2nd Dept. 2010).

Additionally, while Elrac asserts that the co-defendants have caused a delay in the taking of depositions in this case, Hernandez, Narvaez and Narvaez-Ortiz each claim that depositions of the defendants have been scheduled to be held by the end of October 2014. The court notes that the instant motion was filed on September 30, 2014.

Accordingly, Elrac's motion for summary judgment is denied with leave to renew upon the completion of the examinations before trial of the defendants.

Dated: Bronx, New York
May 18, 2015



Hon. Julia I. Rodriguez, J.S.C.