

Franklin v Chalov

2018 NY Slip Op 30771(U)

March 21, 2018

Supreme Court, Bronx County

Docket Number: 304487/2013

Judge: Howard H. Sherman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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GREGORY FRANKLIN,

Plaintiff,

-against-

ALEKSEY CHALOV, REBER CORPORATION,
REBER TRANSPORTATION, REBER
TRANSPORT, INC., RYDER TRUCK RENTAL,
INC., JONATHAN NIEVES, KL PRODUCTIONS,
INC., and KENNETH LONGERT,

Defendants.

DECISION AND ORDER
Present: HON. HOWARD H. SHERMAN
Index No.

304487/2013

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Recitation, as required by CPLR 2219 (a), of the papers considered in the review of the motions as indicated below:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Notice of Motion and Affidavits Annexed	2
Opposition	3
Opposition	4
Opposition	5
Reply	6
Reply	7

The plaintiff commenced this action to recover damages for personal injuries allegedly sustained on May 5, 2012, on the New York State Thruway 1-87 southbound near Ramapo, New York. The plaintiff was a passenger in a vehicle owned by defendant Ryder Truck Rental, Inc. ("Ryder"), and operated by defendant Jonathan Nieves, who was a employee of KL Productions, Inc. ("KL," collectively the "Ryder defendants"), the company that rented the vehicle from Ryder. The vehicle in which the plaintiff was a passenger collided with a vehicle operated by Aleksey Chalov and owned by Reber Corporation (the "Reber defendants"). As relevant here, the plaintiff alleges that Ryder, among other things,

was negligent in maintaining the Ryder truck bearing the unit number 453895 and operated by Nieves, and was negligent in entrusting the vehicle to Nieves and KL.

Ryder now moves, pursuant to CPLR 3211 (a) (7), to dismiss the claims as asserted against it on the ground that, pursuant to 49 USC § 30106 (the "Graves Amendment"), it is protected from liability. In support of its application, Ryder submits the summons and complaint, the answer of the Ryder defendants, a police report concerning the subject collision, the rental agreement between Ryder and KL, Ryder's report of the accident, a vehicle repair history report, an affidavit of a Ryder employee, and the deposition testimony transcripts of Nieves and the plaintiff. The plaintiff opposes the motion and cross-moves for an order sanctioning Ryder for its willful failure to preserve and produce the subject vehicle for inspection. The plaintiff contends that Ryder failed to meet its burden to show that the Graves Amendment is applicable to this matter. In support of his motion, the plaintiff submits the pleadings and a collision report. The Reber defendants also oppose Ryder's application, arguing, inter alia, that the discovery process has not been completed, and it would be prejudicial to dismiss Ryder from the action.

As relevant to the instant application, Nieves testified that on May 5, 2012, he was employed as a manager at KL. A few days before the accident, he leased four Ryder trucks, on behalf of KL, to transport stage production equipment from a warehouse in Walden, New York to the Hammerstein Ballroom in Manhattan. On May 5, at approximately 9:30 p.m., Nieves drove one of the Ryder trucks from Manhattan to Walden and arrived at approximately 12:00 a.m. The plaintiff was a passenger in the truck that Nieves was driving. After loading the truck with equipment, Nieves drove toward New York City, again with the plaintiff as a passenger. The roadway was not wet, but there appeared to be some fog. Nieves had not driven the truck before traveling to Walden that night. He testified that he did not experience any mechanical difficulties while driving the truck, and that his

maximum speed was approximately 55 to 65 miles per hour because the truck had a “governor.” At approximately 2:30 a.m., while approaching a curve on the New York State Thruway 1-87, the truck that Nieves was operating collided with the rear of another truck. The roadway was dark, and Nieves did not observe reflective strips or lights on the lead truck prior to the impact. At some point after the accident, Ryder contacted Nieves to ascertain whether “something was wrong with the truck,” and Nieves responded “not to [his] knowledge.” Nieves testified that his drivers license was suspended at various times between 2007 and 2012, and that he possessed a “regular” drivers license on the date of the accident. Nieves and employees of KL who possessed drivers licenses went to a Ryder location in Walden to collect the rented vehicles.

The plaintiff testified that on the date of the accident, he was employed by KL as a handyman. The plaintiff did not have a drivers license; therefore, he did not drive for KL. He was a passenger in the truck that Nieves drove to Walden. Prior to the accident, Nieves did not state that he had difficulty operating the truck. Nieves was not drinking or smoking while driving, and the weather was clear. The accident occurred while the plaintiff was looking down at his phone, and he was rendered unconscious when the vehicles collided.

In an affidavit, Eric Davis, a claims representative for Ryder, stated that he was responsible for reviewing accident reports and vehicle maintenance records for Ryder. Davis stated that the accident report included in the record was a report used by Ryder to record accidents, and that the maintenance record was a printout from Ryder's computer system showing the maintenance history of the Ryder truck involved in the accident. The maintenance report indicated that the subject vehicle “was in the Ryder maintenance facility on February 21, 2012 for a total vehicle inspection, as routine maintenance.” Davis stated that the records reflect that there were no mechanical difficulties with the truck that

contributed to the happening of the accident. He further averred that Ryder was engaged in the business of renting or leasing vehicles.

In determining a motion pursuant to CPLR §3211(a) (7), a court must afford the pleading a liberal construction, accept all the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83 [1994]; *Laduzinski v Alvarez & Marsal Taxand LLC*, 132 AD3d 164 [1st Dept 2015]; *Hedges v E. River Plaza, LLC*, 126 AD3d 582 [1st Dept 2015]). “[W]here evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Antoine v Kalandrishvili*, 150 AD3d 941, 941-942 [2d Dept 2017]; *see Vorel v NBA Props.*, 285 AD2d 641 [2d Dept 2001]; *Hinrichs v Youssef*, 214 AD2d 604 [2d Dept 1995]). For the purposes of the instant application, all of the plaintiffs averments in the complaint must be accepted as true, and the complaint must be liberally construed (*see Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

The Graves Amendment provides that the owner of a vehicle that is engaged in the trade or business of renting or leasing motor vehicles shall not be liable under any State law for damages sustained in a motor vehicle accident provided there is no negligence or criminal wrongdoing on the part of the owner (*see 49 USC § 30106 [a]*). Thus, the statute preempts the vicarious liability imposed pursuant to Vehicle and Traffic Law § 388 with respect to actions commenced after its effective date (*see Jones v Bill*, 10 NYS3d 550, 554, [2008]; *Hall v Elrac Inc.*, 52 AD3d 262 [1st Dept 2008]; *Hernandez v Sanchez*, 40 AD3d 446

[1st Dept 2007]). Nevertheless, vicarious liability is not abrogated where the injury or damages results from the negligence of the owner or its employee in the operation or maintenance of the vehicle, nor where it seems the owner was negligent in entrusting the vehicle to the operator (*see Collazo v MTA-New York City Transit*, 74 AD3d 642 [1st Dept 2010]; *Sigarán v Elrac, Inc.*, 22 Misc3d 1101(A)[Sup Ct, Bronx County 2008]). Here, Ryder asserts that the plaintiff has failed to state a cause of action against it inasmuch as Ryder is protected by the Graves Amendment.

It is undisputed that Ryder owned the truck with the unit number 453895, which was involved in the collision. Ryder has also established that it is engaged in trade or business of renting motor vehicles. It has submitted the vehicle rental agreement, and Nieves and the plaintiff testified that Nieves rented four trucks from Ryder on behalf of KL. Additionally, Ryder established that it was not negligent in the maintenance of the vehicle. In his affidavit, Eric Davis, a claims representative employed by Ryder, averred that as part of his duties, he reviewed Ryder's records (i.e. Ryder's maintenance records and the accident report) concerning the subject vehicle, which showed that there were no mechanical defects that contributed to the accident. Importantly, Nieves testified that he did not have any mechanical difficulty in driving the vehicle. He testified that accident occurred when he was approaching a curve, and the vehicle with which he collided vehicle did not have its lights turned on (*see Berkan v Penske Truck Leasing Canada, Inc.*, 535 F Supp 2d 341, 345 [WD NY 2008]; *Ballatore v Hub Truck Rental Corp.*, 83 AD3d 978 [2d Dept 2011]; *see also Francesco Ballatore v Hub Truck Rental Corp.*, 83 AD3d 978 [2d Dept 2011]; *McDonald v Grosso*, 220 AD2d 867 [3d Dept 1995]). As a result, Nieves rear-ended the vehicle. Nieves also confirmed to Ryder that there was no mechanical issue with the truck (*see e.g. Vidal v Tsitsiashvili*, 297 AD2d 638, 638 [2d Dept 2002]). The plaintiff's and

co-defendants' contention that additional discovery may uncover relevant evidence is based solely on speculation.

Furthermore, to state a cause of action for negligent entrustment, the plaintiff must allege that a defendant owned or had control over a vehicle and was negligent in entrusting it to one he knew, or in the exercise of ordinary care, should have known, was incompetent to operate it (*see Calhoun v Allen*, 38 Misc 3d 171, 176 [Sup Ct, New York County 2011]). In his deposition, Nieves testified that he rented the vehicles on behalf of KL, and that he possessed a valid drivers license at the time (*see Sigaran v Elrac, Inc.*, 22 Misc3d 1101(A) [Sup Ct, Bronx County 2008]). Accordingly, Ryder's motion to dismiss the claims as asserted against it is granted.

The plaintiff cross-moves for an order to sanction Ryder for failure to preserve and produce the truck involved in the accident. In light of the Court's decision to dismiss the claims as asserted against Ryder, the plaintiffs cross motion is denied.

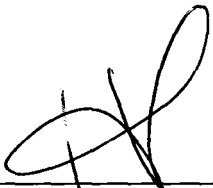
Accordingly, it is

ORDERED that Ryder's motion to dismiss the complaint as asserted against it is granted; and it is

ORDERED that the plaintiffs motion for an order striking Ryder's answer, and other relief is denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: 3/21, 2018



HON. HOWARD H. SHERMAN, J.S.C.