

Dorn v Gaetano Dev. Corp.
2018 NY Slip Op 31854(U)
May 22, 2018
Supreme Court, Bronx County
Docket Number: 22998/2012E
Judge: Lizbeth Gonzalez
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INDEX NO. 22998/2012E

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10E

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Quentin L. Dorn and Tymeisha Dorn,
Plaintiffs,

-against-

DECISION and ORDER
Index No 22998/2012E

The Gaetano Development Corp., Samuel R. Torres,
and River Street Idealease, LLC.,
Defendants.

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The Gaetano Development Corp. and Samuel R. Torres,
Third-Party Plaintiffs,

-against-

Claudia G. Hernandez and River Street Idealease, LLC.,
Third-Party Defendants.

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In the underlying personal injury action, plaintiffs Quentin L. Dorn and Tymeisha Dorn claim that Mr. Dorn sustained serious injuries due to the negligence of defendants The Gaetano Development Corp. ("Gaetano Corp.") and Samuel Torres. Plaintiff alleges that on 10/7/11, he and two co-workers were transporting party equipment in a truck ("party truck") owned by third-party defendant River Street Idealease, LLC. ("Idealease") and operated by defendant Claudia Hernandez. The three co-workers shared a bench seat - Ms. Hernandez sat in the driver's seat, non-party Jose Luis Rosario Florentino sat in the middle and plaintiff sat on the far right - when the party truck collided with a 10-wheel dump truck owned by Gaetano Corp. ("dump truck") and operated by Mr. Torres.

Defendants Gaetano Corp. and Mr. Torres subsequently commenced a third-party action against Ms. Hernandez and Idealease. The third-party defendants thereafter filed a motion for summary judgment pursuant to the federal Graves Amendment and NYS Workers' Compensation Law §§ 11 and 29(6). By Order dated 7/29/16, this Court deemed that the motions were

premature prior to the completion of discovery relative to the plaintiff's alleged injuries and a potential claim for negligent entrustment.

Discovery is now complete. Third-party defendants Hernandez and Idealease move for summary judgment pursuant to CPLR 3212, the federal Graves Amendment and NYS Workers' Compensation Law for an order dismissing the third-party summons and complaint. Defendants/third-party plaintiffs Gaetano Development and Mr. Torres cross-move pursuant to CPLR 3212 for summary judgment and dismissal of the summons and complaint and all claims against them.

VEHICLE & TRAFFIC LAW § 1129

VTL § 1129(a) provides that the driver of a motor vehicle shall have due regard for traffic speed and road conditions and not follow another vehicle more closely than is reasonable and prudent. A rear-end collision with a stationary vehicle thus creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, requiring judgment for the plaintiff unless the defendant can proffer a non-negligent explanation for her failure to maintain a safe distance between the cars (Rainford v Han, 18 AD3d 638 [2005]; Somers v Condlin, 39 AD3d 289 [1st Dept 2007]).

In support of their motion, defendants/third-party plaintiffs Gaetano Corp. and Torres proffer the deposition testimony of Mr. Dorn, Ms. Hernandez and Mr. Torres. At deposition, Mr. Torres testified that as he operated the Gaetano dump truck in the right lane of the northbound Major Deegan Expressway on the date of the accident, he observed that the right lane was closed ahead due to construction. He activated his left signal and moved the truck into the middle lane, where he encountered two passenger cars ahead of him vying to give each other the right of way as they merged into the middle. The two cars came to a complete stop and Mr. Torres, who had continued to slow down, also came to a complete stop. He engaged his hazard lights and, after being stopped for at least ten seconds, felt an impact to the rear of his truck.

Plaintiff Dorn testified that he was a front seat passenger in the party truck driven by Ms. Hernandez, seated on the far right of the bench seat. Mr. Dorn observed the Gaetano dump truck

when it was directly to his right. The dump truck entered the middle lane where Ms. Hernandez was traveling and at the point of contact, the dump truck was fully stopped. Ms. Hernandez had to apply the brakes to slow down and “was trying to stop.”

Ms. Hernandez testified that she operates straight and 18-wheel trucks as a driver for Party Rental. Although Ms. Hernandez did not remember weather conditions or her rate of speed, she recalled that the Gaetano dumpster was stopped at the time of contact.

Summary judgment is a drastic remedy which a court should employ only when there is no doubt as to the absence of triable issues of fact (*Andre v Pomeroy*, 35 NY2d 361 [1974]; *Gibson v American Export Isbrandtsen Lines, Inc.*, 125 AD2d 65 [1st Dept 1987]; *Molina v Phoenix Sound, Inc.*, 297 AD2d 595 [1st Dept 2002]). The Gaetano dump truck was rear-ended. In the absence of a non-negligence excuse for the rear-end collision, the Court finds that defendants/third-party plaintiffs Gaetano Development and Mr. Torres met their burden and grants their cross-motion for summary judgment. The summons and complaint and all claims against them are accordingly dismissed.

GRAVES AMENDMENT

Third-party defendants Hernandez and Idealease move for summary judgment pursuant the federal Graves Amendment and NYS Workers’ Compensation Law for an order dismissing the third-party complaint against them.

The Graves Amendment preempts all state laws and common law that hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the vehicle’s owner (*Merchants Insurance Group v Mitsubishi Motor Credit Association*, 2008 WL 203195 [ED NY 2008]). The Graves Amendment, codified in pertinent part at 49 USC § 30106 [a][1]) and [a][2] as the Federal Transportation Equity Act, states:

[A]n owner of a motor vehicle who rents or leases the vehicle to an individual shall not be liable under the law of any State, by reason of being the vehicle’s owner, for harm to persons or property that results out of the use, operation or possession of the vehicle during the period of

the rental provided that (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 owner's part.

Third-party defendants submit a copy of a 9/6/11 rental agreement between Idealease and Party Rental, LTD and an affidavit from Chris Wolak, Idealease's Director of Finance. Mr. Wolak avers that to the extent that Idealease is in the business of renting trucks, Ms. Hernandez and Party Rental were neither utilizing the truck in Idealease's interest nor under its direction.

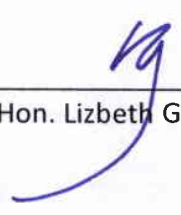
Ms. Hernandez confirmed at deposition that she was employed by Party Rental, LTD and operating the party truck within the course of her employment when the accident occurred. Significantly, Ms. Hernandez testified that she experienced no problems with the truck's brakes or mechanics while driving.

In arguing that all claims against Ms. Hernandez are barred, Ms. Hernandez and Idealease rely upon *Isabella v Hallock*, 22 NY3d 788 (2014). In *Isabella*, the Court of Appeals explained that Workers' Compensation Law §§ 11 and 29(6) renders workers' compensation benefits the exclusive remedy of an injured employee, thus barring the employee from recovering against a negligent co-employee or employer. These two statutes read together further preclude third-parties from seeking contribution or indemnification from the co-employee or employer unless the employee sustained a grave injury. After careful consideration, the Court finds that third-party defendants Claudia Hernandez and River Street Idealease, LLC. met their burden and grants their motion for summary judgment. The third-party complaint against them is dismissed.

The underlying action and third-party action are accordingly dismissed. A copy of this Decision and Order with Notice of Entry shall be served within thirty days.

Dated: 22 May 2018

So ordered,



Hon. Lizbeth González, J.S.C.