

**Kim v Minassian**

2019 NY Slip Op 32862(U)

September 24, 2019

Supreme Court, New York County

Docket Number: 450769/2017

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

EDWARD KIM,

Plaintiff,

- v -

LEON MINASSIAN, LEASERTENT CORP.

Defendant.

-----X

INDEX NO. 450769/2017

MOTION DATE 06/28/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47 were read on this motion to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is ordered that defendant Leasertent Corp.'s motion to reargue, pursuant to CPLR 2221(d)(2), is granted. CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law or facts in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22, 27 (1st Dep't 1992), appeal denied in part, dismissed in part 80 NY2d 1005 (1992) (internal quotations omitted).

Here, moving defendant seeks to re-argue this Court's May 2, 2019 decision (hereinafter referred to as the "Prior Decision") on a motion to amend the answer, arguing that this Court overlooked the portion of the motion seeking summary judgment of dismissal based upon the Graves Amendment. No opposition has been filed.

Defendant Leasertent Corp. is correct in arguing that this Court overlooked a portion of the prior motion which sought to amend its answer and for summary judgment. The Court's Prior Decision only addressed the portion of the prior motion seeking to amend the answer, and overlooked the portion seeking summary judgment. Thus, defendant Leasertent Corp.'s instant motion to reargue is granted, and the Court herein considers defendant Leasertent Corp.'s motion for summary judgment seeking dismissal of this action against it based upon the Graves Amendment.

In this personal injury action arising out of a motor vehicle accident, defendant Leasertent Corp. moves for summary judgment dismissing the complaint against it, arguing that it is a vehicle rental company such that it is not vicariously liable for the instant motor vehicle accident pursuant to the Graves Amendment (49 USC §30106). It is well settled that the Graves Amendment bars state statutory and common law vicarious liability actions against owners of motor vehicles who are in the business of renting or leasing motor vehicles for the negligence of the drivers.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case". *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]". *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980).

Here, defendant Leasertent Corp. has established that it leased the subject vehicle to co-defendant Leon Minassian at the time of the accident. It is undisputed that defendant Leasertent Corp. is in the business of leasing motor vehicles. Thus, defendant Leasertent Corp. has established entitlement to summary judgment, and the burden shifts to plaintiff and co-defendant to raise an issue of fact. The instant motion is unopposed. As such, no issues of fact have been raised, and the instant motion is granted.

Accordingly, it is

ORDERED that defendant Leasertent Corp.'s motion to reargue is granted and, upon reargument, the Court amends the prior order, dated May 2, 2019 to grant the portion of the prior motion seeking summary judgment; and it is further

ORDERED that defendant Leasertent Corp.'s motion for summary judgment to dismiss this action as against it is granted and this action is dismissed as to defendant Leasertent Corp. only; and it is further

ORDERED that any cross-claims against said defendant are dismissed; and it is further

ORDERED that the said claims against co-defendant Leon Minassian are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Leasertent Corp. dismissing the claims and cross-claims made against it, together with costs and disbursements taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that within 30 days of entry, defendant Leasertent Corp. shall serve a copy of this decision/order upon all parties with notice of entry; and it is further

ORDERED that all parties shall appear for a previously scheduled compliance

conference on September 30, 2019 at 9:30am in room 106 of 80 Centre Street, New York, NY.

This constitutes the Decision/Order of the Court.

9/24/2019

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE