

Gilbert v Harris

2019 NY Slip Op 34530(U)

April 2, 2019

Supreme Court, Westchester County

Docket Number: Index No. 59687/2018

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
KAREN GILBERT and JOHN GILBERT,

Plaintiffs,

-against-

DECISION and ORDER
Motion Sequence Nos. 1-2
Index No. 59687/2018

ERIC HARRIS and EAN HOLDINGS, LLC,

Defendants.

-----X
RUDERMAN, J.

The following papers were considered in connection with plaintiffs' motion pursuant to CPLR 3212 for partial summary judgment against defendants on the issue of liability (sequence 1), and the cross-motion by defendant EAN Holdings, LLC pursuant to CPLR 3212 and 49 USC § 30106 for summary judgment dismissing plaintiffs' complaint and any cross-claims against it (sequence 2):

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - E	1
EAN Holdings Affirmation in Opposition, Exhibit A	2
Harris Affirmation	3
EAN Holdings' Notice of Cross-Motion, Affirmation, Affidavit, Exhibits A - G	4
Plaintiff's Affirmation in Reply and Opposition to Cross-Motion, Exhibit 1	5
Reply Affirmation to Cross-Motion	6

This is an action for personal injuries allegedly sustained by plaintiff Karen Gilbert¹ on June 7, 2017 at approximately 5:00 p.m. as a result of a two-vehicle collision. In moving for summary judgment against all defendants on the issue of liability, plaintiff relies on her affidavit

¹ Plaintiff John Gilbert has a derivative claim. References to "plaintiff" herein will be to plaintiff Karen Gilbert.

describing the accident, and a certified copy of the police accident report. In her affidavit, plaintiff asserts that she was driving on the Bear Mountain Parkway near its intersection with the Jan Peek Bridge in Peekskill, New York, stopped in traffic, when her vehicle was struck in the rear by a vehicle owned by defendant EAN Holdings, LLC and operated by defendant Eric Harris. In the police report the reporting officer recites defendant Harris as stating that “he was attempting to place his sunglasses on his head, looked down and failed to observe [plaintiff’s vehicle] stopped in traffic.”

Defendant EAN Holdings, LLC cross-moves for summary judgment dismissal of the claims against it under the Graves amendment, because it is in the rental car business and the vehicle in question was rented to defendant Harris pursuant to that business.

Analysis

Summary Judgment on Liability

Plaintiff has made a prima facie showing of a right to summary judgment on the issue of liability against the driver, possessor and owner of the vehicle that struck her vehicle from behind. This showing was made with a certified copy of the police accident report and plaintiff’s affidavit describing the accident.

“A rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Cortes v Whelan*, 83 AD3d 763, 763 [2d Dept 2011]).

Defendant Harris has not provided a non-negligent explanation for the collision.

EAN Holdings’ Claim under the Graves Amendment

Ordinarily, the owner of a vehicle whose driver was negligent would be vicariously liable under Vehicle and Traffic Law § 388. However, EAN Holdings contends that it is entitled to

dismissal of the claim against it under the federal statute generally referred to as the Graves amendment, which creates an exception to an owner's vicarious liability where the vehicle owner is in the business of renting or leasing motor vehicles:

“[The] owner of a motor vehicle that rents or leases the vehicle to a person . . . shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle . . . , 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 . . . 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)”

(49 USC § 30106; *see Graham v Dunkley*, 50 AD3d 55 [2d Dept 2008]).

EAN Holdings has submitted sufficient evidence to establish prima facie that it is “engaged in the trade or business of renting or leasing motor vehicles” (*id.*). However, with regard to the second requirement for application of the Graves amendment, namely, that there was no negligence on the part of the vehicle's owner, EAN Holdings' submissions “failed to conclusively establish that it was not negligent in the maintenance of the vehicle” (*see Anglero v Hanif*, 140 AD3d 905, 906-907 [2d Dept 2016]). Moreover, since the evidence must be viewed in the light most favorable to plaintiffs, and every favorable inference must be afforded to them, and facts essential to oppose this cross-motion for summary judgment are exclusively within the knowledge and control of defendants, plaintiff has a viable basis to seek discovery on the issue of the owner's possible negligence before the court finally determines the merits of the cross-motion.

Based upon the foregoing, it is hereby,

ORDERED that the motion by plaintiff for summary judgment on the issue of liability against defendants (sequence 1) is granted, with the proviso that defendant EAN Holdings LLC

may again seek summary judgment dismissing the complaint and cross-claims as against it following discovery; and it is further

ORDERED that the cross-motion (sequence 2) is denied without prejudice to renewal following the completion of discovery, and it is further

ORDERED that the parties shall appear on Monday, May 20, 2019 at 9:30 a.m. in the Preliminary Conference Part of the Westchester Supreme Court in the Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
April 2, 2019


HON. TERRY JANE RUDERMAN, J.S.C.