

Pena v Cab E. LLC
2019 NY Slip Op 34875(U)
May 7, 2019
Supreme Court, Bronx County
Docket Number: Index No. 32813/2018E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
PENA, RAMON A.

Index No. **32813/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

CAB EAST LLC, et al
-----X


Justice.

The following papers numbered 7 to 15 and 20 to 26 in the NYSCEF System were read on this motion for **DISMISSAL**, noticed on **February 19, 2019** and duly submitted as No. 58 on the Motion Calendar of **February 19, 2019**.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-15
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	20-25
Replying Affidavit and Exhibits	26
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the motion of defendant Cab East LLC to dismiss the complaint as asserted against it and the cross claim asserted against it is granted, in accordance with the annexed decision and order.

Dated: **05/07/2019**

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
RAMON A. PENA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 32813/2018E

CAB EAST LLC, TARA R. KAZI, MOHAMMED KAZI
and SHAKIL A. KAZI,

Defendants.

-----X

John R. Higgitt, J.

This negligence action arises out of a motor vehicle accident that occurred on April 4, 2018. Defendant Cab East LLC (“Cab”) seeks dismissal of the complaint as against it and the cross claims against it under CPLR 3211(a)(1) and (7). For the reasons that follow, the moving defendant’s motion for is granted.

Under the Graves Amendment (49 USC § 30106), the owner of a leased or rented motor vehicle is not vicariously liable for personal injuries sustained as a result of an accident involving a leased or rented vehicle (*see Jones v Bill*, 10 NY3d 550, 554 [2008]). To establish entitlement to judgment under the Graves Amendment, the owner of the leased or rented vehicle must show: (1) that the owner is in the business of leasing or renting motor vehicles; (2) that the owner owned the subject vehicle; (3) that the owner leased or rented the subject vehicle to a third party; and (4) if plaintiff alleges that the owner was negligent, that the resulting accident was not caused by negligent maintenance of the vehicle by the owner (*see Villa-Capellan v Mendoza*, 135 AD3d 555, 556 [1st Dept 2016]; *Cassidy v DCFS Trust*, 89 AD3d 591, 591 [1st Dept 2011]; *see also Reifsnyder v Penske Truck Leasing Corp.*, 140 AD3d 572 [1st Dept 2016]).

In support of its motion defendant Cab submitted a copy of the pleadings, the rental

agreement, and the affidavit of Dean Bridges, director of Business Center Operations at Ford Motor Credit Company. In his affidavit, Bridges avers that defendant Cab is a single-purpose entity in the business of leasing vehicles: Cab holds lease agreements. Bridges also averred that after the vehicles are leased, defendant Cab has no obligation to maintain or repair the vehicles because Cab does not possess or have physical control over the vehicles. The lease agreement shows that at the time of the subject accident the vehicle was leased to defendant Tara Kazi.

On a motion to dismiss the complaint for failure to state a cause of action under CPLR 3211(a)(7), the court must accord the pleadings a liberal construction, accept the facts alleged as true, afford the plaintiff every reasonable favorable inference, and determine whether the facts alleged fit within a cognizable legal theory (*see Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137 [2017]). Where a defendant submits evidence in support of the motion, the important criterion is whether the plaintiff has a valid cause of action, not whether plaintiff has stated one (*see Leon v Martinez*, 84 NY2d 83 [1994]; *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014]).

Here, defendant Cab's evidence - - the affidavit and lease agreement - - conclusively established that plaintiff has no cause of action against defendant Cab because the Graves Amendment applies (*see generally Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc., supra*).

In opposition, plaintiff argues that the motion should be denied because defendant Cab failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]). Additionally, plaintiff argues that because defendant Tara Kazi alleged in her answer that she did not know who owned the vehicle, an issue

of fact exists as to whether she entered into a lease with defendant Cab. However, the lease provided by defendant Cab demonstrated that there is a binding contract between it and defendant Kazi relating to the subject motor vehicle.

Plaintiff also argues that the motion is premature because depositions have not been taken. Plaintiff, however, did not point to any facts essential to his opposition that are in defendant Cab's exclusive control (*see* CPLR 3211[d]).

The aspect of defendant Cab's motion for dismissal under CPLR 3211(a)(1) is denied as moot. The court notes, however, that the affidavit provided by defendant is not "documentary evidence" (*see Celentano v Boo Realty, LLC*, 160 AD3d 576 [1st Dept 2018])

Accordingly, it is


ORDERED, that defendant Cab East LLC's motion to dismiss is granted and the complaint as against it and the cross claims against it are dismissed; and its further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Cab East LLC dismissing the complaint as against it and the cross claims against it.

The parties are reminded of the July 26, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: May 7, 2019



John R. Higgitt, A.J.S.C.