

Lesch v Advantage Rent A Car

2019 NY Slip Op 35049(U)

November 1, 2019

Supreme Court, Bronx County

Docket Number: Index No. 21597/2019E

Judge: John R. Higgitt

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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: I.A.S. PART 14

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MARJORIE A. LESCH,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21597/2019E

ADVANTAGE RENT A CAR and NIRAV
GIRISHKUMAR PATEL,

Defendants.
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John R. Higgitt, J.

Upon the September 10, 2019 notice of motion of defendant Advantage Rent A Car (Advantage) and the affirmation and exhibits submitted in support thereof; there being no opposition to the motion; and due deliberation; defendant Advantage’s motion for leave to renew its prior motion for dismissal of the complaint as against it is granted and upon renewal, the dismissal of the complaint as against defendant Advantage is granted.

This negligence action arises out of a motor vehicle accident that occurred on July 26, 2018. Defendant Advantage renews its motion for dismissal of the complaint as against it under CPLR 3211(a)(7), after its original motion was denied without prejudice to renewal. The prior motion was denied because defendant failed to address the new allegations in plaintiff’s amended complaint alleging defendant Advantage’s failure to maintain the allegedly offending vehicle. The present motion addresses such allegations.

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 independently 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 Reifsnnyder v Penske Truck Leasing Corp.*, 140 AD3d 572 [1st Dept 2016]).

In support of its motion, defendant Advantage submitted the pleadings, the rental agreement, the affidavit of Tatiana Morales (claims analyst of AEZ Rent A Car), and the affidavit of defendant Patel. In her affidavit, Morales avers that defendant Advantage is in the business of renting and leasing vehicles and that on the date of the accident, the subject vehicle was rented to codefendant Patel, as confirmed by the lease agreement. Morales further avers that there was no history of complaints or maintenance issues. Furthermore, defendant Patel averred that he rented the subject vehicle from defendant Advantage and did not experience any mechanical or electrical malfunctions with the vehicle.

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 standard is whether the plaintiff *has* a valid cause of action, not whether plaintiff 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 Advantage's evidence - - the affidavits and lease agreement - - conclusively established that plaintiff has no cause of action against defendant Advantage because of the applicability of the Graves Amendment (*see generally Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc., supra*).

No party opposed the motion.

Accordingly, it is

ORDERED, that the aspect of defendant Advantage's motion for leave to renew the August 23, 2019 decision and order of the undersigned is granted, without opposition; and it is further


ORDERED, that upon renewal, the aspect of defendant Advantage's motion for dismissal of the complaint is granted, and the complaint as against it and the cross claims against it are dismissed; and it is further

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

The remaining parties are reminded of the December 13, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 1, 2019



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