

**Wallis v Harrison**

2019 NY Slip Op 35074(U)

November 1, 2019

Supreme Court, Bronx County

Docket Number: Index No. 30337/2019E

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

-----X  
PEGGY WALLIS,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30337/2019E

SHERMAN HARRISON, MARLON CAMILO and  
LEASE PLAN U.S.A., INC.,

Defendants.  
-----X

John R. Higgitt, J.

Upon the October 10, 2019 notice of motion of defendant Lease Plan U.S.A., Inc. (Lease Plan) and the affirmation, affidavit and exhibits submitted in support thereof; plaintiff's October 10, 2019 affirmation in opposition; defendant Lease Plan's undated affirmation in reply; and due deliberation; defendant Lease Plan's motion for an order dismissing the complaint as against it pursuant to CPLR 3211(a)(1) and (7) is granted in part.

In this action emanating from a motor vehicle accident, plaintiff alleges that defendant Lease Plan owned, managed, maintained and controlled the offending vehicle, and that defendant Camilo operated the offending vehicle in the course of his employment with defendant Lease Plan.

Defendant Lease Plan moves for an order dismissing the complaint as against it pursuant to CPLR 3211(a)(1) and (7) on the ground that the claims against it are barred by the Graves Amendment.

In support of the motion, defendant Lease Plan submits the affidavit of its senior risk analyst, who avers that Lease Plan is engaged in the business of long-term commercial leasing of vehicles and providing fleet-related services. The analyst also avers that, pursuant to an annexed February 25, 2004 lease agreement, at the time of the accident, the offending vehicle was leased

to a non-party who, pursuant to the terms of the lease, was responsible for maintenance of the vehicle. Defendant Lease Plan also submits the police accident report, containing a vehicle identification number for the vehicle driven by defendant Camilo that matches that appearing in a schedule attached to the lease agreement. The analyst avers further that defendant Camilo was not defendant Lease Plan's agent, servant or employee.

Pursuant to Vehicle and Traffic Law § 388(1), an owner of a motor vehicle is jointly and severally liable for the negligence of the vehicle's driver. The Graves Amendment (49 USC § 30106[a]) exempts from liability under Vehicle and Traffic Law § 388(1) those vehicle owners and their affiliates "engaged in the trade or business of renting or leasing motor vehicles."

The foregoing was sufficient to meet defendant Lease Plan's prima facie burden on the claims of vicarious liability (*see Hall v Elrac, Inc.*, 52 AD3d 262 [1st Dept 2008]) and, to the extent such a claim is discernable from the complaint, respondeat superior (*see Freibaum v Brady*, 143 AD 220 [1st Dept 1911]; *cf. Cassidy v DCFS Tr.*, 89 AD3d 591 [1st Dept 2011]). Furthermore, defendant Lease Plan established that, because the lessor was obligated to maintain the vehicle throughout the term of the lease, the accident was not due to defendant Lease Plan's independent negligence in the maintenance of the vehicle (*see Reifsnyder v Penske Truck Leasing Corp.*, 140 AD3d 572, 573 [1st Dept 2016]; *Villa-Capellan v Mendoza*, 135 AD3d 555 [1st Dept 2016]; *see also Costello v Panavision of N.Y.*, 8 AD3d 143 [1st Dept 2004], *lv den* 4 NY3d 703 [2005]).

Defendant Lease Plan established its entitlement to dismissal of the complaint as against it pursuant to CPLR 3211(a)(7) (*see Cukoviq v Iftikhar*, 169 AD3d 766 [2d Dept 2019]; *Aviaev v Nissan Infiniti LT*, 150 AD3d 807 [2d Dept 2017]), and plaintiff failed to raise an issue of fact. Plaintiff offered token opposition to the motion.

Accordingly, it is

ORDERED, that the aspect of defendant Lease Plan's motion for dismissal of the complaint as against it pursuant to CPLR 3211(a)(7) is granted; and it is further

ORDERED, that the complaint as against defendant Lease Plan is dismissed; and it is further


ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Lease Plan dismissing the complaint as against it; and it is further

ORDERED, that the motion is otherwise denied; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **December 20, 2019**.

This constitutes the decision and order of the court.

Dated: November 1, 2019

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