Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **RICHARD G. LATIN**
Justice

IA PART 40

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FREDRIQUE ROWE, as ADMINISTRATRIX of the Estate of SP, an infant under the age of 14 years, and FREDRIQUE ROWE, Individually,

Plaintiffs,

-against-

DENALI WATER SOLUTIONS, LLC, ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, and WALLACE RAMIREZ,

Defendants.

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Index No.: 702606/19
Motion Date: 9/26/19
Motion Cal. No.: 17 & 18
Motion Seq. No.: 3 & 4

The following numbered papers read on this summary judgment motion by defendant, ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, and plaintiffs' motion to compel.

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits	1 - 4
Notice of Motion-Affidavits-Exhibits	5 - 8
Affirmation in Opposition	9 - 10
Replying	11 - 12

Upon the foregoing cited papers, it is ordered that this summary judgment motion by defendant, ENTERPRISE FM TRUST s/h/a ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST (Enterprise), to dismiss plaintiffs' verified complaint and all cross-claims against it pursuant to CPLR 3212 and 49 USC § 30106, and plaintiffs' motion to compel, are determined as follows:

BACKGROUND:

On February 13, 2019, plaintiffs commenced the instant action to recover for injuries they allegedly sustained in a pedestrian-knockdown accident that occurred on March 23, 2017 at the intersection of 23rd Avenue and 94th Street, Queens, New York. Fredrique Rowe was the mother and natural guardian of infant SP (Plaintiffs). At the time of the accident, Fredrique Rowe was pushing her infant-daughter SP in a stroller as they crossed the subject intersection within a marked crosswalk. As Plaintiffs were crossing, the stroller was struck by a pickup truck, which was owned by Enterprise, leased by defendant Denali Water Solutions, LLC (Defendant-Lessee/Denali), and operated by defendant Wallace Ramirez (Defendant-Driver/Ramirez). SP was rushed from the scene of the accident to Elmhurst Hospital, where she was pronounced dead.

On June 6, 2019, Plaintiffs moved for summary judgment on the issue of liability (Motion Seq. No. 1). In an order dated June 26, 2019, this Court granted Plaintiffs' motion for summary judgment on the issue of liability against Defendant-Lessee and Defendant-Driver. Additionally, this Court found Plaintiffs to be free of comparative fault. Enterprise now moves for summary judgment pursuant to CPLR 3212 and 49 USC § 30106 (Motion Seq. No. 3), and Plaintiffs move to compel (Motion Seq. No. 4).

Motion Seq. No. 3; Enterprise's Summary Judgment Motion:

The proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v. Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v. Felder*, 33 AD3d 645, 645-46 [2d Dept 2006]). Thus, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (*see Voss v. Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

Pursuant to 49 USC § 30106, aka the Graves Amendment, "the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle if the owner (i) is engaged in the trade or business of renting or leasing motor vehicles, and (ii) engaged in no negligence or criminal wrongdoing" (*Anglero v. Hanif*, 140 AD3d 905, 906 [2d Dept 2016], quoting *Bravo v. Vargas*, 113 AD3d 579, 580 [2d Dept 2014]).

However, the Graves Amendment does not apply where a plaintiff seeks to hold the owner of a vehicle liable for the alleged failure to maintain the rented vehicle (*see Olmann v. Neil*, 132 AD3d 744, 745 [2d Dept 2015]). In those cases, to prevail on a summary judgment motion, a defendant owner must establish that: (1) it was engaged in the business of renting/leasing vehicles; (2) the subject vehicle had been rented/leased out at the time of the accident; (3) it was not negligent in entrusting the subject vehicle to the defendant-driver; (4) regular maintenance was performed on the subject vehicle; and (5) the condition of the vehicle was not a proximate cause of the accident (*see Lozano v. Magda, Inc.*, 165 AD3d 1249, 1249 [2d Dept 2018]; *Currie v. Mansoor*, 159 AD3d 797, 798 [2d Dept 2018]; *Anglero*, 140 AD3d at 906-07; *Olmann*, 132 AD3d at 744-45; *Bravo*, 113 AD3d at 580).

In support of the motion, Enterprise submits, inter alia, the Master Lease Agreement between Enterprise and Defendant-Lessee, and an affidavit of Justin Brewer, a Loss Control Manager for Enterprise. The Court finds that Enterprise met its prima facie entitlement to summary judgment as a matter of law through its evidentiary submissions; such submissions demonstrate that it was in the business of leasing

vehicles, the subject vehicle was leased to Defendant-Lessee at the time of the accident, it was not negligent in entrusting the subject vehicle to Defendant-Lessee, it did not negligently maintain the subject vehicle, and the condition of the vehicle was not a proximate cause of the accident (*id.*). Plaintiffs did not oppose this motion (*id.*; *see generally People v. Cratsley*, 86 NY2d 81 [1995]; *Hochhauser v. Electric Ins. Co.*, 46 AD3d 174 [2d Dept 2007]).

Motion Seq. No. 4; Plaintiffs' Motion to Compel:

On June 6, 2019, Plaintiffs also moved, pursuant to CPLR 2307, for an order issuing a so-ordered subpoena duces tecum requiring the New York City Police Department (NYPD) to produce certified copies of numerous documents and files (Motion Seq. No. 2). The same day, June 6, 2019, this Court granted Plaintiffs' motion and issued a so-ordered subpoena duces tecum requiring NYPD to produce the demanded evidence.

Plaintiffs served the so-ordered subpoena duces tecum, dated June 6, 2019, on NYPD (NYPD Subpoena), however, NYPD refused to provide the demanded records. In a letter dated June 25, 2019, NYPD stated, inter alia, that such disclosure "would constitute an unwarranted invasion of personal privacy."

Plaintiffs now move to compel defendants Denali and Ramirez to provide authorizations to obtain the non-privileged legal file from Ramirez's prior attorney, Bruce K. Kaye, Esq., who represented him in an administrative hearing pursuant to VTL § 510(3) at the NYS Department of Motor Vehicles Safety and Business Hearings Bureau. Judge Anna Nechayev presided over the hearing and issued a Findings and Disposition, dated December 10, 2018 (2018 Hearing Disposition).

"It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*D'Alessandro v. Nassau Health Care Corp.*, 137 A.D.3d 1195, 1196 [2d Dept 2016], quoting *Crazytown Furniture, Inc. v. Brooklyn Union Gas Co.*, 150 A.D.2d 420 [2d Dept 1989]; *see Forman v. Henkin*, 30 N.Y.3d 656, 661 [2018]). "A motion to compel responses to discovery demands and interrogatories is properly denied where the demands and interrogatories seek information that is irrelevant, overly broad, or burdensome" (*Pesce v. Fernandez*, 144 AD3d 653, 655 [2d Dept 2016]).

In support of the motion, Plaintiffs submit, inter alia, the NYPD Subpoena and the 2018 Hearing Disposition. Plaintiffs argue, inter alia, that they are entitled to their discovery demands, as they are seeking punitive damages, so whether Defendant-Driver was impaired is relevant to the issue of damages.

The Court notes that punitive damages are available in personal injury cases involving drunk [or impaired] drivers (*see Gershman v. Ahmad*, 156 AD3d 868, 869 [2d

Dept 2017]; *Chiara v. Dernago*, 128 AD3d 999, 1003 [2d Dept 2015]; *Rodgers v. Duffy*, 95 AD3d 864, 866-67 [2d Dept 2012]). Nevertheless, evidence that a defendant was driving while intoxicated [and/or under the influence of drugs] is insufficient by itself to justify imposing punitive damages (*id.*).

Here, the Court finds that Plaintiffs have no basis to believe that the requested file contained information helpful to their case (*see Whitfield v. Board of Educ. of City of Mount Vernon*, 14 AD3d 551, 552 [2d Dept 2005]). The 2018 Hearing Disposition clearly states that the responding officer performed sobriety tests on Defendant-Driver and that there was no evidence of drugs or alcohol present. Furthermore, the 2018 Hearing Disposition reveals that Defendant-Driver was not issued any tickets for speeding, failure to turn into the correct lane, failure to have headlights on, or failure to have a turning signal on when making the turn. Moreover, while Defendant-Driver was subsequently arrested for failure to yield the right of way, all criminal charges were dismissed.

The Court reiterates that Plaintiffs were granted summary judgment on the issue of liability and have been found to be free of comparative fault. The Court further notes that Plaintiffs request the same documents and information as in the NYPD Subpoena. Given the circumstances, the Court finds that Plaintiffs' motion to compel the production of an authorization to obtain the non-privileged legal file from Ramirez's prior attorney is unwarranted (*id.*).

Accordingly, the unopposed summary judgment motion by defendant, ENTERPRISE FM TRUST s/h/a ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, is granted in its entirety, and Plaintiffs' motion to compel is denied; and it is further

ORDERED that Plaintiffs' complaint as against defendant, ENTERPRISE FM TRUST s/h/a ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, is hereby dismissed; and it if further

ORDERED that, if any, all crossclaims and counterclaims as against defendant, ENTERPRISE FM TRUST s/h/a ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, are hereby dismissed; and it if further

ORDERED that defendant, ENTERPRISE FM TRUST s/h/a ENTERPRISE FLEET MANAGEMENT, INC. d/b/a ENTERPRISE FM TRUST, shall serve a copy of this order with notice of entry upon all parties, within thirty (30) days of the date of entry.

This constitutes the decision and order of the Court.

Dated: October 8, 2019

RICHARD G. LATIN, J.S.C.

FILED
OCT 22 2019
COUNTY CLERK
QUEENS COUNTY