

Sanchez v Hub Truck Rental Corp.

2019 NY Slip Op 35168(U)

October 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 26599/2017E

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: PART 14

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SANCHEZ, GRACE

Index No. 26599/2017E

- against -

Hon. JOHN R. HIGGITT,

HUB TRUCK RENTAL CORP., et ano

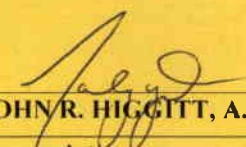
A.J.S.C.

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The following papers numbered 9 to 22 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (DEFENDANT), noticed on August 2, 2019 and duly submitted as No. 27 on the Motion Calendar of August 2, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	9-15
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	16-20
Replying Affidavit and Exhibits	21-22
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, defendant Hub Truck Rental Corp.’s motion for summary judgment dismissing the complaint as against it and the cross claims against it is granted, in accordance with the annexed decision and order.

Dated: 10/07/2019

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

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

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

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

-----X
GRACE SANCHEZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26599/2017E

HUB TRUCK RENTAL CORP. and VELTER J.
CIFUENTES,

Defendants.
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John R. Higgitt, J.

Upon defendant Hub Truck Rental Corp.’s (“defendant Hub Truck”) June 15, 2019 notice of motion and the affirmation, and exhibits submitted in support thereof; plaintiff’s June 25, 2019 affirmation in opposition and the exhibits submitted therewith; defendant Hub Truck’s July 12, 2019 affirmation in reply; and due deliberation; defendant Hub Truck’s motion for summary judgment dismissing the complaint as against it and the cross claims against it is granted.

This negligence action arises out of a motor vehicle accident that occurred on July 31, 2014. Defendant Hub Truck seeks summary judgment on the issue of liability under the Graves Amendment (49 USC § 30106). Defendant Hub Truck notes the lack of an allegation of independent negligent or criminal wrongdoing on defendant Hub Truck’s part. In support of its motion, defendant Hub Truck submits the pleadings, the rental agreement, and the affidavit of Jennifer Gelber (the insurance manager for defendant Hub Truck).

In her affidavit, Ms. Gelber averred that defendant Hub Truck is in the business of renting and leasing vehicles and that the subject vehicle was leased to Arctic Glacier USA, Inc. Ms. Gelber also averred that the driver of the vehicle, defendant Cifuentes, was not in the employ of defendant Hub Truck. Additionally, Ms. Gelber averred, based upon a search of the maintenance records for the vehicle, that there were no complaints regarding the vehicle.

In opposition, plaintiff argues that a triable issue of fact exists with respect to whether defendant Cifuentes was a permissive user of defendant Hub Truck's vehicle. Plaintiff also argues that the motion should be denied because defendant Hub Truck has a duty to provide minimum financial liability coverage for its lessees. Plaintiff asserts that, under Insurance Law § 370, defendant Hub Truck has a financial responsibility to cover any damages or negligence action premised on the tortious conduct of those operating its vehicles.

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

Here, defendant Hub Truck's evidence - - the affidavit and lease agreement - - established prima facie that the action is barred as against it by the Graves Amendment. Plaintiff failed to raise a triable issue of fact as to whether defendant Cifuentes was a permissive user of defendant Hub Truck's vehicle, and plaintiff's argument that liability can be imposed on defendant Hub Truck by virtue of Insurance Law § 370 is without merit (*see 37 S. Fifth Ave. Corp. v Dimensional Stone & Tile*, 58 Misc3d 56 [App Term 2d Dept 2017]).

Plaintiff also argues that the motion is premature because depositions have not been taken. The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda, supra; Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Notably, plaintiff did not provide an affidavit in connection with this motion, and no reason was given for her failure to do so.

Accordingly, it is


ORDERED, that defendant Hub Truck Rental Corp.'s motion for summary judgment 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 Hub Truck Rental Corp. dismissing the complaint as against it and the cross claims against it.

The parties are reminded of the October 25, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 07, 2019



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