

Sindor v PV Holding Corp.

2019 NY Slip Op 35176(U)

February 13, 2019

Supreme Court, Bronx County

Docket Number: Index No. 25431/2018E

Judge: John R. Higgitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 14

-----X
SINDOR, JEAN M.

Index No. 25431/2018E



- against -

Hon. JOHN R. HIGGITT,

PV HOLDING CORP., et ano.
-----X

A.J.S.C.

The following papers numbered 7 to 23 in the NYSCEF System were read on this motion for DISMISSAL, noticed on November 19, 2018 and duly submitted as No. 31 on the Motion Calendar of February 5, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-20
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	21-23

Upon the foregoing papers, defendant PV Holding’s motion for summary judgment is granted, in accordance with the annexed decision and order.

Dated: 02/13/2019

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
JEAN M. SINDOR,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 25431/2018E

PV HOLDING CORP. and "JOHN DOE," name being
fictitious and unknown,

Defendants.
-----X

John R. Higgitt, J.

Upon the November 1, 2018 notice of motion of defendant PV Holding Corp. (PV Holding) and the affirmation, affidavits and exhibits submitted in support thereof; there being no opposition to the application; the court having advised the parties by email on February 5, 2019 that the motion was unopposed, and having received no indication that the court's communication was not received by the parties; the court not having received any response to its communication; the court's review of the records relating to this matter indicating that the matter has not been settled, discontinued or otherwise disposed; and due deliberation; defendant PV Holding's motion for summary judgment is granted.

In this action alleging injuries emanating from a motor vehicle accident, defendant PV Holding, the alleged owner of the vehicle involved, moves for summary judgment dismissing the complaint pursuant to 49 USC § 30106(a), commonly known as the Graves Amendment, which 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 complaint alleges that PV Holding owned, and defendant "John Doe" operated, a vehicle bearing New York State license plate number GAM2998, and that both defendants were negligent in the operation of the vehicle.

In support of the motion, defendant PV Holding submits the affidavit of its Assistant Secretary, who avers that PV Holding is the nominee titleholder for non-party Aesop Leasing Corp., which leases vehicles to non-party Avis Budget Car Rental, LLC (“ABC”), which in turn subleases vehicles to subsidiary companies including Avis Rent A Car System, LLC (“ARAC”), which then commercially leases vehicles. The Assistant Secretary further avers that ABC is the parent of, and exercises management and control over, the subsidiaries, and that the renter of the vehicle at the time of the accident, non-party Tamiko Collins, was not an employee of PV Holding or any of its affiliates or related companies. The Assistant Secretary also avers that PV Holding does not maintain, service or repair any vehicles used by ARAC in its rental business.

Defendant PV Holding also submits the affidavit of ABC’s Regional Insurance Risk Manager, who avers that the ARAC rental agreement submitted on the motion is a true copy of the rental agreement in effect at the time of the accident, and that the information contained therein is identical to that in the copy provided to the rental customer.¹

Defendant PV Holding also submits the affidavit of ABC’s Manager of Vehicle Governance, who avers that the maintenance records for vehicle number 80071213 demonstrate the absence of mechanical complaints or repairs made between the date the vehicle entered service on February 28, 2017 and the date of the accident, March 18, 2017.

The foregoing was sufficient to establish defendant PV Holding’s prima facie entitlement to summary judgment 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

¹ Defendant PV Holding submitted two rental agreements entered into by the customer, one of which contains a vehicle description including the New York State license plate number alleged in the complaint. This vehicle is identified as “vehicle number 80071213.”

591 [1st Dept 2011]). The motion being unopposed, no party raised an issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Accordingly, it is

ORDERED, that the motion of defendant PV Holding Corp. for summary judgment is granted, without opposition, and plaintiff's claims against defendant PV Holding Corp. are severed and dismissed; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant PV Holding Corp. dismissing the complaint and all cross-claims against it; and it is further

ORDERED, that the remaining parties shall appear before the undersigned in Part 14, courtroom 407, at 2:00 p.m. on **March 15, 2019** for a preliminary conference.

Plaintiff is reminded that the remaining defendant, "John Doe," is as yet unidentified by name (*see* CPLR 1024) and has not yet been served (*see* CPLR 306-b), and that plaintiff's failure to prosecute the action against the remaining defendant may ultimately serve as a basis for sua sponte dismissal.

This constitutes the decision and order of the court.

Dated: February 13, 2019



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