

Jones v Grant

2020 NY Slip Op 31012(U)

April 21, 2020

Supreme Court, New York County

Docket Number: 158940/2019

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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ALICIA JONES, MAYA WIGGINS,

Plaintiff,

- v -

REGINALD GRANT, RYDER TRUCK RENTAL,
INC., RYDER SYSTEM, INC., ACE JANITORIAL SUPPLY
CO. INC., ELVIS GONZALEZ, THE CITY OF NEW YORK,
NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN
AND BRONX SURFACE TRANSIT OPERATING
AUTHORITY

Defendant.

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INDEX NO.	158940/2019
MOTION DATE	3/5/2020
MOTION SEQ. NO.	001 002
DECISION + ORDER ON MOTION	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 34

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motions are decided as follows:

Plaintiffs commenced this action by the filing of a summons on September 13, 2019 and issue was joined by service of defendants Reginald Grant, Ryder Truck Rental, Inc. Ryder System, Inc., and Ace Janitorial Supply Inc’s answer dated October 2, 2019, The City of New York’s answer, October 4, 2019 and the transit defendants’ answer, dated November 12, 2019. Plaintiffs now move for summary judgment on the issue of liability.

The instant action arises out of a motor vehicle accident which occurred on January 2, 2019. In support of the motions, plaintiffs submits the affidavit of plaintiffs Alicia Jones and Maya Wiggins. Said affidavits state only that “Prior to the accident, I was seated in the vehicle, which

was stopped for a red light on Grand Street at or near its intersection with Clinton Street in the County of New York, State of New York, when suddenly my vehicle was struck in the rear by a vehicle I now know to be operated by defendant Reginald Grant and owned by defendants Ryder Truck Rental, Inc., Ryder System, Inc., Ace Janitorial Supply Co. Inc. Plaintiffs' affidavits provide no other detail regarding the facts of the subject accident.

Summary judgment is a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue. (*Andre v. Pomeroy*, 32 NY2d 361 [1974]; *Kwong On Bank, Ltd. v. Montrose Knitwear Corp.*, 74 AD2d 768 [2d Dept 1980]; *Crowley Milk Co. v. Klein*, 24 AD2d 920 [3d Dept 1965]). Even the color of a triable issue forecloses the remedy (*Newin Corp. v. Hartford Acc & Indem. Co.*, 62 NY2d 916 [1984]). The evidence will be construed in a light most favorable to the one moved against. (*Bennicasa v. Garrubo*, 141 AD2d 636 [2d Dept 1988]; *Weiss v. Gaifield*, 21 AD2d 156 [3d Dept 1964]). The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see, *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

While a rear-end collision generally establishes a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on the operator of the rear vehicle to explain how the accident occurred. (See, *Leal v Wolff*, 224 AD2d 392; *Gambino v City of New York*, 205 AD2d 583), here plaintiffs' affidavits are so lacking in detail that plaintiffs have failed to establish an entitlement to summary judgment. Furthermore, almost no discovery has been conducted in this matter and as such, plaintiff's motion is premature (CPLR §3212[f]).

The City of New York moves for an Order pursuant to CPLR § 3211(a)(l) and CPLR § 3211(a)(7) granting summary judgment to the City, dismissing the Complaint and all cross-claims against the City as the City is not a proper party in this matter. The Complaint alleges that the City "owned", "leased," "rented," "maintained," "managed," and "controlled" and gave Elvis Gonzalez permission to "operate," "maintain," "manage," and "control" a vehicle bearing New York State Registration number T728252C. And further alleges that the City was negligent in the hiring, training, and retention of Elvis Gonzalez.

In support of its motion, the City submits the affidavit of Latia Riley, a Fleet Analyst for DCAS whose search confirmed "that the City did not own, lease, operate, manage, maintain, or control any 2016 Honda taxi with New York Registration number T728252C in the County, City, and State of New York on January 22, 2019." Accordingly, the City is not a proper party in this matter. The Court further notes that the taxi in question is registered to defendant, Elvis Gonzalez. As such, The City of New York has utterly refuted the allegations in plaintiff's complaint and its motion must be granted in its entirety.

Plaintiffs' motion for summary judgment is hereby denied in its entirety.

ORDERED that the motion of defendant The City of New York to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

LAURENCE L. LOVE, J.S.C.

4/21/2020				
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE