

Velasquez v Famiglietti
2020 NY Slip Op 32029(U)
May 7, 2020
Supreme Court, Bronx County
Docket Number: 29337/2019E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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ALEJANDRA VELASQUEZ and DESTINY ESTRADA,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 29337/2019E

JACQUELME A. FAMIGLIETTI, NILT, INC., MEI LI,
JEANNE M. LANG, WILLIAM J. BUZZONE, TIANA
MICHELLE CINTRON, and ANA M. SO JO,

Defendants.

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John R. Higgitt, J.

Upon defendant NILT, Inc.'s (NILT) January 9, 2020 notice of motion and the affirmation, memorandum of law and exhibits submitted in support thereof; plaintiffs' February 14, 2020 affirmation in opposition; defendant NILT's February 20, 2020 affirmation in reply and the exhibits submitted therewith; and due deliberation; defendant NILT's motion for dismissal 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 May 8, 2018. Defendant NILT seeks dismissal of the complaint (*see* CPLR 3211[a][7]) on the ground that the action as against it is barred by the Graves Amendment (49 USC § 30106). In support of its motion, defendant NILT submits the pleadings, the lease agreement, the police accident report, the affidavit of Feronkie Clopton (supervisor for the consumer collections department of Nissan Motor Acceptance Corporation), and the affidavit of Leigh Steinberg (Senior Paralegal at Nissan Motor Acceptance Corporation).

In his affidavit, Clopton averred that defendant NILT is in the business of leasing vehicles and that the subject vehicle was leased to defendant Famiglietti at the time of the accident. Clopton further averred that, as reflected in the lease agreement, defendant NILT does not engage in the repair, maintenance, or service of the vehicle once that vehicle had been leased.

Based on the lease agreement, the lessee is solely responsible for the repair and maintenance of the leased vehicle during the lease term.

In her affidavit, Steinberg averred that as the senior paralegal for Nissan North America, Inc., she performs legal and human resources functions for defendant NILT. Steinberg averred that defendant Famiglietti is not an employee or agent of defendant NILT.

Under the Graves Amendment (49 USC § 30106), certain owners of leased or rented motor vehicles are not vicariously liable for personal injuries sustained as a result of accidents involving 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 NILT's evidence - - the affidavits and lease agreement - - established the applicability of the Graves Amendment (*see generally Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014]).

Plaintiffs opposed the motion, asserting that the motion should be denied because the affidavits submitted by defendant NILT are defective because they failed to include the certificates of conformity required by CPLR 2309(c). However, because "authentication of the oathgiver's authority can be secured later, and given nunc pro tunc effect if necessary," the lack

of such certificates is a mere irregularity and not a fatal defect (*see Matapos Tech. Ltd. v Compania Andina de Comercio Ltda*, 68 AD3d 672, 673 [1st Dept 2009]).

Plaintiffs assert too that the motion is premature because depositions have not been completed. The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny accelerated judgment (*see 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]).


Accordingly, it is

ORDERED, that defendant NILT's motion for dismissal the complaint as against it and all cross claims against it is granted, and the complaint as against it and all cross claims against it are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant NILT dismissing the complaint as against it and all cross claims against it.

This constitutes the decision and order of the court.

Dated: May 7, 2020



John R. Higgitt, J.S.C.