

<b>Taylor v Port Auth. of N.Y. &amp; N.J.</b>
2020 NY Slip Op 33620(U)
October 30, 2020
Supreme Court, Kings County
Docket Number: 521528/17
Judge: Bruce M. Balter
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At an IAS Term, Part 13 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30<sup>th</sup> day of October, 2020.

P R E S E N T:

HON. BRUCE M. BALTER,

Justice.

----- X  
KEVIN JAMES TAYLOR AND ANN TAYLOR,

Plaintiffs,

- against -

Index No. 521528/17

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,  
JFK INTERNATIONAL AIR TERMINAL LLC,  
FJC SECURITY SERVICES, INC.,  
UNIVERSAL PROTECTION SERVICE, LLC  
D/B/A ALLIED UNIVERSAL SECURITY SERVICE  
ALEXANDER BEKKER, NTNT INC., AMERICAN LIMOUSINE LLC,  
D/B/A FLYTE TYME WORLDWIDE TRANSPORTATION,  
AMERICAN LIMOUSINE, INC. D/B/A FLYTE TYME  
WORLDWIDE TRANSPORTATION, PASHA ENTERPRISES CORP.,  
PASHA ENTERPRISES LLC, HANABAR BHAIRO, & DIAL 7 CAR &  
LIMOUSINE SERVICE INC.,

Defendants.

-----X  
AMERICAN LIMOUSINE LLC  
D/B/A FLYTE TYME WORLDWIDE TRANSPORTATION,

Third-Party Plaintiff,

-against-

PASHA ENTERPRISES LLC & PASHA ENTERPRISES CORP.,

Third-Party Defendants.

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The following e-filed papers read herein:

NYSCEF Doc. No.<sup>1</sup>

Notice of Motion, Affidavit +Affirmation and Annexed Exhibits	<u>289-309</u>
Opposing Affirmations and Annexed Exhibits	<u>314-319</u>
Reply Affirmations	<u>320</u>

Upon the foregoing papers, defendant/third-party defendant Pasha Enterprises LLC (movant or Pasha LLC) moves (in motion sequence [mot. seq.] eight) for an order, pursuant to CPLR 3212, granting it summary judgment and dismissing: (1) the cross claims asserted against it by both American Limousine LLC d/b/a Flyte Tyme Worldwide Transportation (American LLC) and American Limousine Inc. d/b/a Flyte Tyme Worldwide Transportation (American Inc.) as well as dismissing (2) the third-party complaint asserted against it by American LLC on the ground that it is an improper party to the instant action and third-party action and not liable for the underlying accident.<sup>2</sup>

***Background and Procedural History***

Plaintiff Kevin James Taylor (plaintiff or Mr. Taylor) alleges that defendants injured him on June 20, 2017 while he was at the passenger pick-up/drop-off area at terminal four of John F. Kennedy airport in Queens. More specifically, plaintiff claims that a motor vehicle operated by defendant Hanar Bhairo struck him when he was exiting and unloading his luggage from a motor vehicle that defendant Alexander Bekker

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<sup>1</sup> New York State Courts Electronic Filing.

<sup>2</sup> Pasha Enterprises LLC explains that it has only made this motion against American LLC and American Inc. as all other parties, including the main action’s plaintiffs, have stipulated to discontinue their claims and cross claims against it (*see* NYSCEF Doc. No. 301, stipulation of discontinuance, annexed as exhibit K to Pasha LLC’s summary judgment motion).

(Bekker) operated and defendant NTNT Inc. owned. Plaintiffs commenced the main action on November 6, 2017 by filing a summons and verified complaint alleging that Bekker acted as an agent and/or employee of multiple defendants including NTNT Inc., American LLC, and American Inc. In response, Bekker, NTNT Inc., American LLC and American Inc. filed an answer with cross claims on January 10, 2018.

In addition, American Limousine LLC commenced a third-party action on January 2, 2019 against movant and Pasha Enterprises Corp. (Pasha Corp.) by filing a summons and verified third-party complaint seeking damages regarding their third-party claims of contractual and common-law indemnification, breach of contract and contribution. Movant and Pasha Corp. filed its verified answer to the third-party complaint with counterclaims on June 21, 2019. American LLC filed a verified reply to the third-party counterclaims on March 19, 2020.<sup>3</sup>

As mentioned (in n 2), all parties other than American Limousine LLC and American Limousine Inc. stipulated to discontinue without prejudice all claims and cross claims against Pasha Enterprises. Pasha LLC moves, as also mentioned earlier, for summary judgment dismissing American LLC's and American Inc.'s cross claims as well

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<sup>3</sup> Several additional pleadings were filed between plaintiffs' initial summons and verified complaint and the American Limousine LLC's verified reply to the third-party counterclaims. These filings included, as pertinent herein, plaintiffs' amended and second amended verified complaint, which, collectively, first added Pasha Enterprises LLC and Pasha Enterprises Corp and then Universal Protection Service, LLC d/b/a Allied Universal Security Services. Correspondingly, the additional filed pleadings included a verified answer and second amended verified answer of American Limousine LLC, American Limousine Inc., Bekker and NTNT, Inc., which each contained cross claims seeking contribution and common-law indemnification against all other codefendants including Pasha LLC. The additional filed pleadings further included a verified answer and amended verified answer by Pasha Enterprises LLC and Pasha Enterprises Corp. which each included cross claims.

as American LLC's third-party complaint on the basis of being an improper party to address the cross claims and third-party complaint. Movant asserts that no material factual issues exist that it does not now and has never owned, operated, leased, controlled, repaired or had any maintenance responsibilities for the vehicles involved in the accident and, in particular, for the vehicle bearing New York Registration Number T680977, which defendant Bekker operated in transporting Mr. Taylor, the injured plaintiff, to JFK Airport. Hence, Pasha LLC reasons that it has borne no common-law or contractual duties or obligations for such vehicles and thus bears no concomitant liability.

### **Arguments in Support**

Pasha LLC considers itself an improper party to the main and third-party actions as it did not own, operate, manage, maintain, control, lease, or repair any of the vehicles involved in the accident nor did it have any contractual or common-law duty to those vehicles and, in particular, to the vehicle bearing New York Registration Number T680977 which transported Mr. Taylor, the injured plaintiff to JFK Airport and which defendant Bekker operated. The absence of such duty, movant reasons, means it cannot bear liability for the remaining cross claims or for the third-party claims against it.

Movant further argues that there are no material factual issues as its business had no relationship with American Inc., American LLC, NTNT Inc., or Alexander Bekker, was not involved in arranging Mr. Taylor's ground transportation, and had no connection to the subject accident. It additionally asserts that it has never acted as a "base" or dispatched any calls to any TLC- licensed independent contractors. Instead, movant states that it is a domestic New Jersey Limited Liability Company that operates a

limousine service which owned, operated and insured five limousine vehicles and that none of these vehicles were involved in Mr. Taylor's accident.

Pasha LLC further explains that Mr. Taylor exited the vehicle at the terminal, and Mr. Bekker also exited the vehicle to help him with his luggage. Then, as Mr. Taylor was unloading his bags from the rear of Mr. Bekker's vehicle with Bekker's assistance, a vehicle operated by defendant Hanar Bhairo suddenly accelerated away from the curb, hit the rear of Mr. Bekker's vehicle, where Mr. Bekker and Mr. Taylor were standing, and struck plaintiff.

In addition, movant recounts that American LLC had been contracted to provide a car service to transport and discharge Mr. Taylor and his baggage at the curb at JFK Airport Terminal Four; that American LLC referred the reservation, under a 2016 Affiliate Agreement with Pasha Corp., to that entity; and Pasha Corp., in turn, referred the reservation to Mr. Bekker's company, NTNT Inc. Pasha LLC states that it was not a party to the 2016 Affiliate Agreement with American LLC, which actually contracted to provide a car service on June 17, 2018 for Mr. Taylor. Indeed, Pasha Corp. states that it contracted with American LLC for chauffeur services pursuant to the 2016 Local Affiliate Agreement. Pasha Corp. further states that regardless of whatever extent it may have been involved in arranging or helping to provide ground transportation services to Mr. Taylor on the accident date, there is no evidence connecting Pasha LLC to such transaction. Pasha Corp. in this regard references the March 12, 2020, affidavit of Vadim Evans, a principal of both Pasha Corp. and Pasha LLC, who attests that Pasha LLC was

not involved in any manner with any work being performed by NTNT, Inc. or Alexander Bekker on June 20, 2017.

### **Arguments in Opposition**

In opposition, American LLC argues that the instant motion is premature. It seeks to depose Mr. Evans, principal of both Pasha defendants, to determine his role and the role of the Pasha defendants in the underlying accident and the extent of the alleged breach of the Affiliate Agreement by referral of Mr. Taylor's reservation to NTNT Inc., a third-party vendor. American LLC also argues that the alleged breach means factual issues remain as to intertwinement of the Pasha defendants and Mr. Evans' potential collusion or deception which prevents Pasha LLC from meeting its burden of making a prima facie showing. American LLC submits an affidavit in opposition of its president, Michael Fogarty (NYSCEF Doc. No. 314) to counter Mr. Evans' version of underlying occurrences and the Affiliate Agreement's terms and to further argue that factual issues exist.

### **Third-Party Defendants' Reply**

Pasha LLC argues in reply that only American LLC, and not American Inc., submitted opposition. Therefore, Pasha LLC asserts that it is entitled to the relief sought against American Inc. without opposition, and all cross claims asserted by American Inc. against it should be dismissed.

As to American LLC, Pasha LLC separately argues there is no rebutting that the Affiliate Agreement is between American LLC and Pasha Corp, not Pasha LLC, and no discovery will change that fact. Pasha LLC notes that Mr. Evans' status as a principal in

both Pasha entities does not impose liability on Pasha LLC under the Affiliate Agreement and provides no basis for joining it as a party in the main and third-party actions. Pasha LLC continues to stress that it had no involvement in arranging Mr. Taylor's transportation to JFK airport, no connection to the accident or the vehicles in the accident and no obligation under the Affiliate Agreement. It adds that whether or not a breach occurred under the Affiliate Agreement by another corporate entity does not foist liability on it, a non-party to that agreement, and any factual issue about a breach is irrelevant to the present motion. Pasha LLC maintains that it has met its prima facie burden for judgment as a matter of law, that American LLC has identified no relevant evidence within Pasha LLC's knowledge or control to warrant further discovery and submits that New York appellate courts have routinely granted summary judgment motions to dismiss involving an improper party.

Pasha enterprises argues that whether there was a breach of the affiliate agreement by Pasha Enterprises Corp is not relevant to the instant motion and should not be litigated herein. It asserts that the only issue is whether Pasha Enterprises LLC is a proper party to this action. It is argued that Pasha Enterprises LLC was not the affiliate, had no obligations under the agreement and whether or not there was a breach with another entity does not bear on the question of liability against Pasha Enterprises LLC. Third-party defendants state that issues of fact as to whether there was a breach of the affiliate agreement are not relevant to defeat the instant motion. Pasha Enterprises LLC states that it was not a party to the subject affiliate agreement and therefore was not in a position to comply with or breach the Agreement. Third-party defendants rely on the

proposition that New York appellate courts have routinely granted summary judgment motions to dismiss on the ground that such defendant is not a proper party and cite several cases. It argues that consequently, it has met its prima facie burden establishing it to judgment as a matter of law as it is not a proper defendant or third-party defendant.

#### *Discussion*<sup>4</sup>

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and thus, should only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2010]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

Pasha LLC has demonstrated its prima facie entitlement to summary judgment dismissing the complaint, cross claims and the third-party claims asserted against it because it had no involvement in the subject accident. The parties in their papers recognize, most notably, that Pasha *LLC* was *not* a party to the affiliate agreement.

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<sup>4</sup> American LLC’s opposition is regarded as also applying for American Inc. as both the affirmation of counsel for American LLC and Mr. Fogarty’s affidavit seek denial of the motion in its entirety.

Indeed, Pasha Corp. acknowledges that the *affiliate agreement existed between it and American LLC*, that it served as a dispatcher of radio calls to independent contractors who are TLC-approved black car limousine companies and that it thus referred reservations to independent contractors such as NTNT Inc. Indeed, *American LLC*, itself, through the affidavit of Mr. Fogarty, its president, acknowledges Pasha LLC's position (NYSCEF Doc. No. 314 at ¶ 5) and *agrees* that Pasha Corp. *executed the affiliate agreement* (*id.* at §8). Mr. Fogarty suggests that outstanding questions exist concerning Pasha Corp.'s compliance with the terms of the affiliate agreement as affects indemnification claims. However, the roles of the Pasha entities are of no consequence to the instant motion since the 2016 affiliate agreement only existed between Pasha Corp., not Pasha LLC, and third-party plaintiffs.

That the 2016 agreement prohibited subcontracting to third-parties without Flyte Tyme's written approval does not negate that Pasha Enterprises LLC was not a party to the agreement.<sup>5</sup> It is undisputed that Pasha LLC, a domestic New Jersey Limited Liability Company, has operated as a limousine service, never acted as a base or dispatched calls to any TLC licensed independent contractors and, most significantly, owned, operated,

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<sup>5</sup> Third-party plaintiff claims that Pasha Enterprises Corp. was supposed to provide chauffeur service or ground transportation for Flyte Tyme. It further claims that when it referred reservations to Pasha Enterprises Corp. it expected that the vehicles to be used to fill the reservations would be Pasha Corp. owned vehicles and Pasha Corp employed drivers. However, there is no evidence that the agreement required Pasha Corp to provide cars it owned exclusively to American LLC dba Flyte Tyme. The provision of "high quality, professional, chauffeured transportations" does not necessarily mean using vehicles owned and operated by Pasha Corp. as utilizing independent contractors who are all TLC approved black car limousine companies may be deemed "high quality, professional, chauffeured transportations."

and insured five vehicles in connection with its limousine business, none of which were involved in the June 20, 2017 accident herein.

American LLC does not specify what additional evidence would change the fact that Pasha Enterprises LLC is not a party to the agreement and that there was no contractual obligation between the two. Claiming more discovery is needed to determine the extent of the breach or the roles of the Pasha Enterprises entities is unavailing. There are no factual issues that Pasha LLC was not a party to the agreement. Any issue concerning a breach between Pasha Corp. and American LLC is not appropriate to this litigation. “It is well settled that the mere hope by the party opposing summary judgment that it will uncover evidence that will prove its case is insufficient under CPLR 3212 (f) to postpone a decision on a summary judgment motion (*Casey v Clemente*, 31 AD3d 361, 362 [2d Dept 2006] [internal citation omitted]). Here, as in *Casey*, the opposition “failed to demonstrate how further discovery might yield material facts which would warrant denial of summary judgment (*id.* [internal citation omitted]).

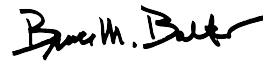
Consequently, Pasha Enterprises LLC has met its burden and established that it is not a proper party to the main and third-party actions (*see Banda v Lynch Park, LLC*, 114 AD3d 893, 893-894 [2d Dept 2014] [“respondent established its prima facie entitlement to judgment as a matter of law by proving that it was not a signatory to the arbitration agreement and, thus, was not a proper party to the arbitration]). American LLC and American Inc. have failed to raise issues of fact rebutting Pasha LLC’s prima facie showing that it is not a proper party to the instant action. Accordingly, it is

**ORDERED** that Pasha LLC's summary judgment motion, mot. seq. eight, to dismiss American LLC's cross claims and third-party claims is granted.

The court has considered the parties' remaining contentions and finds them unavailing. All relief not expressly granted herein is denied.

The foregoing constitutes the decision and order of the court.

E N T E R,



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J. S. C.