

Rogers v Rivera

2021 NY Slip Op 31061(U)

April 3, 2021

Supreme Court, New York County

Docket Number: 154876/2020

Judge: Lisa S. Headley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART IAS MOTION 22

Justice

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GREGORY ROGERS,

Plaintiff,

- v -

ELIZABETH RIVERA, FUSION AUTO FINANCE LLC

Defendant.

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INDEX NO. 154876/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

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

Upon the foregoing documents, it is ORDERED that defendant, Fusion Auto Finance, LLC.'s (hereinafter referred to as "defendant Fusion") motion for summary judgment is granted for the reasons stated herein. Plaintiff filed opposition to the motion.

This is a personal injury action arising out of a motor vehicle accident that occurred on June 18, 2019. Here, the movant-defendant moves for summary judgment dismissing the complaint against defendant Fusion, only. Defendant Fusion argues that it is a vehicle rental company, and as such it is not vicariously liable for the instant motor vehicle accident pursuant to the Graves Amendment (49 USC §30106). It is well settled that the Graves Amendment bars state statutory and common law vicarious liability actions against owners of motor vehicles who are in the business of renting or leasing motor vehicles for the negligence of the drivers.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented. See, Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 (1957). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case". Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue

requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]”. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560 (1980). However, the Court of Appeals has made clear that bare allegations or conclusory assertions are insufficient to create genuine, bona fide issues of fact necessary to defeat such a motion. *See, Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978).

In support of its motion, defendant Fusion submits the affidavit of Don Porter, President of Fusion Auto Finance, LLC. Don Porter states that defendant Fusion is engaged in the business of leasing motor vehicles pursuant to long term written leases. Don Porter further states that co-defendant, Elizabeth Rivers, entered into a lease agreement with “Route 46 Chrysler” on October 21, 2017, and that such lease agreement was simultaneously assigned by “Route 46 Chrysler” to Fusion. Still further, Don Porter avers that on the date of the accident, Elizabeth Rivera was not an employee, servant, or agent of Fusion, nor was she acting on the instruction, expressed or implied of Fusion. In addition, Don Porter asserts that Fusion Auto Finance LLC never possessed the subject motor vehicle, nor exercised dominion, control or authority over the subject motor vehicle. Thus, defendant Fusion has established entitlement to summary judgment, and the burden shifts to plaintiff to raise an issue of fact.

In opposition, plaintiff argues that an exception to the Graves Amendment applies herein. Specifically, plaintiff contends that an action is permitted against the owners of the motor vehicles, even where the owners are in the business of renting or leasing motor vehicles, where there is negligence on the part of the owner. Here, plaintiff alleges that defendant Fusion was negligent in the maintenance, repair and inspection of the motor vehicle at issue herein, as well as, negligent in the entrustment of the motor vehicle to Elizabeth Rivera, co-defendant herein.

In support of their argument as to negligent entrustment, plaintiff relies on a LEXIS search of co-defendant, Elizabeth Rivera which shows a criminal filing from April 23, 2006, and argued that defendant Fusion should have been put on notice that entrusting Rivera with the vehicle would be negligent. As stated in the affidavit of Don Procter, President of Fusion Auto Finance, LLC, the lease was assigned to them by “Route 46 Chrysler.” In addition, Don Procter stated in his affidavit that they never possessed the subject motor vehicle nor exercised dominion, control or authority over the subject motor vehicle. The plaintiff has failed to explain how defendant Fusion was negligent in the maintenance, repair and inspection of the subject motor vehicle. Thus, plaintiff

has failed to raise any genuine issues of triable fact or establish an exception to the Graves Amendment with competent evidence.

Moreover, defendants proffer only an attorney's affirmation, and fail to raise any genuine issues of fact regarding defendant Fusion's motion for summary judgment. "[A] bare affirmation of . . . [an] attorney who demonstrated no personal knowledge . . . is without evidentiary value and thus unavailing." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 563 (1980). Thus, plaintiff's attorney's conclusory and speculative affirmation, is insufficient to raise any factual issues to warrant a denial of the within motion. *See, GTF Marketing Inc. v. Colonial Aluminum Sales, Inc.*, 66 N.Y.2d 965, 968 (1985).

Therefore, this court rejects plaintiff's argument that this motion is premature because depositions have not been held and discovery is not complete. Here, plaintiff's arguments are unavailing. Depositions are not needed since the opponents of the motion had personal knowledge of the facts under *CPLR §3212(f)*, and failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact. *See, Avant v. Cepin Livery Corp.*, 74 A.D.3d 533, 534, 904 N.Y.S.2d 381, 382 (2010), *citing, Morgan v. New York Tel.*, 220 A.D.2d 728, 633 N.Y.S.2d 319 (1995). As such, defendant Fusion's motion for summary judgment as to liability against plaintiff is granted.

Accordingly, it is

ORDERED that movant-defendant's motion for summary judgment dismissing the complaint against Fusion Auto Finance LLC is granted; and it is further

ORDERED that the within action is dismissed with prejudice as to defendant Fusion Auto Finance, LLC, only; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Fusion Auto Finance, LLC, dismissing the instant matter against it, together with costs and disbursements taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, defendant Fusion Auto Finance, LLC, shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/3/2021

DATE



LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE