

Belgrave v Andrew T. Cleckley Funeral Servs., Inc.

2021 NY Slip Op 31472(U)

April 29, 2021

Supreme Court, Kings County

Docket Number: 515144/20

Judge: Mark I. Partnow

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29th day of April, 2021.

P R E S E N T:

HON. MARK I. PARTNOW,
Justice.

-----X
CAMILLE BELGRAVE and JAHVON BELGRAVE,

Plaintiffs,

- against -

ANDREW T. CLECKLEY FUNERAL SERVICES, INC.,
ANDREW T. CLECKLEY FUNERAL HOME, INC.,
ANDREW T. CLECKLEY,
BARBADIAN ALVA STUART,
VG UTICA REALTY LLC,
UHAUL INTERNATIONAL,
U-HAUL CO. OF NEW YORK AND VERMONT, INC.,
and/or JOHN DOE FUNERAL HOMES (#1-#10)
(fictitious names, individuals and/or entities),
JOHN DOE LANDLORDS (#1-#10)
(fictitious names, individuals and/or entities),
JOHN DOE TRUCKING RENTAL COMPANIES (#1-#10)
(fictitious names, individuals and/or entities),
JOHN DOE CEMETERIES AND CREMATORIES (#1-#10)
(fictitious names, individuals and/or entities),

Defendants.

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DECISION AND ORDER

Index No. 515144/20

Mot. Seq. No. 1

The following e-filed papers read herein:

NYSCEF #:

Notice of Motion, Affirmation (Affidavit), and Exhibits Annexed _____	<u>4-12</u>
Affirmation in Opposition and Exhibits Annexed _____	<u>19-21</u>
Reply Affirmation _____	<u>22</u>

In this action to recover damages for personal injuries, defendants U-Haul International, Inc. (incorrectly sued herein as UHaul International) and U-Haul Co. of New York and Vermont, Inc. (collectively, U-Haul), move for an order pursuant to CPLR 3211 (a) (1) and (7) dismissing the complaint as against them with prejudice. Plaintiffs Camille Belgrave and Jahvon Belgrave (collectively, plaintiffs) oppose.

Facts and Allegations

Plaintiffs reside at 1576 East 51st Street in Brooklyn, New York (Complaint, ¶ 16).¹ Defendants Andrew T. Cleckley Funeral Services, Inc. and Andrew T. Cleckley Funeral Home, Inc., which are owned and/or managed by defendants Andrew T. Cleckley and Barbadian Alva Stuart (collectively, the funeral home defendants), operate a funeral home at 2047A Utica Avenue, which is directly adjacent of plaintiffs' residence on East 51st Street (*id.*, ¶ 17). "On or about April 17, 2020, [p]laintiffs first observed several U-Haul trucks parked directly in front of their residence and on [their street] block, generally" (*id.*, ¶ 19). "Within a day or two after arrival of the U-Haul trucks, [p]laintiffs began noticing a horribly foul, rancid, unbearable odor which was detected within their home and outside their residence" (*id.*, ¶ 20). "On at least two occasions, and while the U-Haul trucks were located on [p]laintiffs' block, . . . [p]laintiffs witnessed bodies stored in the back of said trucks" (*id.*, ¶ 21). "Based upon information and belief, and following an apparent complaint submitted to the police department concerning the odor, the U-Haul trucks were relocated from [p]laintiffs' block . . . to an area at or near [the] [f]uneral [h]ome on Utica Avenue" (*id.*, ¶ 22). "After the U-Haul trucks were relocated, [p]laintiff, Jahvon Belgrave, continued to observe the presence of the trucks on Utica Avenue for some time thereafter" (*id.*, ¶ 23). "Plaintiffs were exposed to the foul, rancid, and unbearable odor of decomposing bodies from a day or two after the U-Haul trucks arrived [*i.e.*, on and after April 17, 2020], up until [the license of the] [f]uneral

¹ The complaint (NYSCEF #1) is not verified either by plaintiffs or their counsel.

[h]ome was suspended by the New York State Health Department [approximately two weeks later] on or about May 1, 2020” (*id.*, ¶ 24).

On August 18, 2020, plaintiffs brought this action against, among others, U-Haul alleging, as against it, causes of action sounding in negligence, negligent infliction of emotional distress, intentional infliction of emotional distress, as well as private and public nuisance (Complaint, Counts IV through VIII). The theory of plaintiffs’ case, regardless of the label attached to it, is twofold. Firstly, plaintiffs allege that U-Haul owed a *general* duty to plaintiffs and the public at large to ensure that its trucks were being rented for lawful purposes and not for purposes that would endanger the general welfare of the public (such as an improper and illegal storage of cadavers) (Complaint, ¶¶ 38-39). Secondly, plaintiffs allege that U-Haul, by virtue of knowing the number of its trucks rented and the identity of the funeral home defendants as funeral homes and/or crematorium services, had a *specific* duty to inquire as to the nature and intended use of its trucks by the funeral home defendants (*id.*, ¶¶ 40, 41).

On October 30, 2020, U-Haul served the instant pre-answer motion to dismiss the complaint as against it. U-Haul’s motion is supported by a corporate officer’s affidavit averring, as to U-Haul International, Inc., that such defendant “does not operate any rental facilities in New York City, nor does [it] employ the individuals who work at such facilities.”²

² See Affidavit William W. Wolff, III, Vice President of U-Haul Co. of New York and Vermont, Inc., dated October 25, 2020 (NYSCEF #8, refiled as NYSCEF #12) (the Wolff affidavit), ¶ 5.

The corporate officer's affidavit further avers, as to U-Haul Co. of New York and Vermont, Inc., that its standard rental agreement, as is used in New York City, explicitly restricts the use of its rented trucks to the "Do-It-Yourself" moving and permits no other use.³ Specifically, the U-Haul standard rental agreement provides that:

"1. Customer represents and warrants that *the rental of this EQUIPMENT is for the sole purpose of Do-It-Yourself moving*. Customer agrees that rental of the EQUIPMENT with the intent to use the EQUIPMENT for a purpose other than do-it-yourself moving . . . may be construed as fraudulent.

* * *

11. Customers shall not store or transport . . . any toxic; . . . poisonous, dangerous or illegal substances, regardless of the manner in which it is stored or transported" (italics added).⁴

Plaintiffs' opposition to the motion consists solely of their counsel's affirmation.

Discussion

For the reasons stated in the Court's decision and order issued concurrently in the companion case captioned *Constant v Andrew T. Cleckley Funeral Services, Inc., et al.*, index No. 511314/20 (Sup Ct, Kings County) (the companion decision and order), U-Haul's motion is granted as more fully set forth in the decretal paragraphs below, and the complaint is dismissed as against it with prejudice.

Conclusion

³ *Id.*, ¶ 3.

⁴ See Additional Terms & Conditions of Equipment Rental, annexed as Exhibit 1 to the Wolff affidavit.

Based on the foregoing, it is

ORDERED that the branch of U-Haul’s motion which is for an order pursuant to CPLR 3211 (a) (7) dismissing the complaint as against it for failure to state a cause of action is granted, and the complaint is dismissed in its entirety as against U-Haul with prejudice, and the remaining branch of U-Haul’s motion which is for an order of dismissal pursuant to CPLR 3211 (a) (1) is denied as moot; and it is further

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

ORDERED that to reflect the dismissal of U-Haul as set forth herein, as well as the prior stipulated dismissal of defendant VG Utica Realty LLC from this action (NYSCEF #26), the caption is amended to read as follows:

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CAMILLE BELGRAVE and JAHVON BELGRAVE,

Plaintiffs,

- against -

Index No. 515144/20

ANDREW T. CLECKLEY FUNERAL SERVICES, INC.,
ANDREW T. CLECKLEY FUNERAL HOME, INC.,
ANDREW T. CLECKLEY,
BARBADIAN ALVA STUART,
and/or JOHN DOE FUNERAL HOMES (#1-#10)
(fictitious names, individuals and/or entities),
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(fictitious names, individuals and/or entities),
JOHN DOE CEMETERIES AND CREMATORIES (#1-#10)
(fictitious names, individuals and/or entities),

Defendants.

U-Haul's counsel is directed to electronically serve a copy of this decision and order with notice of entry (together with a copy of the companion decision and order) on plaintiffs' counsel and on those parties who have appeared in this action to date, and to electronically file an affidavit of said service with the Kings County Clerk.

This constitutes the decision, order and judgment of the Court.

E N T E R,



J. S. C.