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| Suddler v Unity Elec. Co., Inc. |
| 2021 NY Slip Op 33138(U) |
| November 9, 2021 |
| Supreme Court, Queens County |
| Docket Number: Index No. 715919/20 |
| Judge: Timothy J. Dufficy |
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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CHIANE NICOLE SUDDLER and MICHAEL GASPARD,

Plaintiff,

Index No.: 715919/20

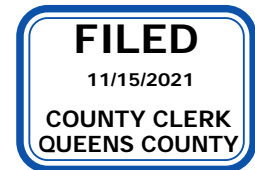
-against-

Mot. Date: 8/17/21

UNITY ELECTRIC CO., INC., ENTERPRISE FLEET MANAGEMENT, INC., and STEPHANIE M. EAGLE,

Mot. Seq. No. 1

Defendants.



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The following papers were read on this motion by plaintiffs for an order granting summary judgment in their favor as against defendants on the issue of liability, pursuant to CPLR 3212 and for an order, pursuant to CPLR 3211(b), striking defendants first, second, eleventh, and twelfth affirmative defenses; and on the cross-motion by defendants for an order granting summary judgment to defendant Enterprise Fleet Management Inc. (Enterprise), pursuant to CPLR 3212, and dismissing plaintiffs' claims against it on the grounds that it is not a proper party to this action as it is immune from claims of vicarious liability, pursuant to the Graves Amendment, 49 U.S.C. 30106.

PAPERS
NUMBERED

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|---|----------|
| Notice of Motion-Affidavits-Exhibits..... | EF 9-16 |
| Notice of Cross-Motion-Affidavits-Exhibits..... | EF 20-28 |
| Answering Affidavits to Motion-Exhibits..... | EF 29-37 |
| Answering Affidavits to Motion-Exhibits..... | EF 39-40 |
| Replying Affidavits..... | EF 41 |
| Replying Affidavits..... | EF 42 |

Upon the foregoing papers, it is ordered that plaintiffs' motion is granted in part and denied in part; and defendants' cross-motion is denied, without prejudice, with leave to renew.

Plaintiffs Chiane Nicole Suddler and Michael Gaspard seek damages for personal injuries, allegedly sustained in a motor vehicle accident, that occurred on June 5, 2019,

on 907 A Cross Island Parkway, at or near its exit with Jamaica Avenue, in Queens, New York. Plaintiffs allege that the vehicle plaintiff Chiane Nicole Suddler was operating (in which vehicle plaintiff Michael Gaspard was a passenger) came in contact with a vehicle owned by defendant Enterprise Fleet Management, Inc. (Enterprise), registered to defendant Unity Electric Co., Inc., and operated by defendant Stephanie M. Eagle, causing the plaintiffs to sustain serious personal injuries due to the negligence of the defendants.

Plaintiffs move for an order granting summary judgment in their favor as against defendants, on the issue of liability, pursuant to CPLR 3212, and for an order, pursuant to CPLR 3211(b), striking the defendants' first, second, eleventh, and twelfth affirmative defenses. Defendants cross move for an order granting summary judgment to defendant Enterprise, pursuant to CPLR 3212, and dismissing plaintiffs' claims against it on the grounds that it is not a proper party to this action as it is immune from claims of vicarious liability, pursuant to the Graves Amendment, 49 U.S.C. 30106.

Turning first to the cross-motion by defendants, the cross-motion is denied, without prejudice, with leave to renew.

Defendants move for summary judgment in favor of defendant Enterprise, based on the protection afforded to rental companies, under the "Graves Amendment."

The Graves Amendment "bars vicarious liability actions against professional lessors and renters of vehicles", as would otherwise be permitted by Vehicle and Traffic Law § 388; *Graham v Dunkley*, 50 AD3d 55, 58 [2d Dept 2008].) The Graves Amendment provides, in pertinent part, that "[a]n owner of a motor vehicle that rents or leases the vehicle to a person . . . shall not be liable under the law of any State . . . by reason of being the owner of the vehicle . . . , for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if . . . the owner . . . is engaged in the trade or business of renting or leasing motor vehicles; and . . . there is no negligence or criminal wrongdoing on the part of the owner." (49 USC § 30106[a][*emphasis added*].) The Graves amendment, by its express terms, is inapplicable to claims of independent negligence asserted against the leasing company, and cannot be asserted as a defense to such claims (*Park v Edge Auto Inc.*, 2009 N.Y. Misc. LEXIS 2427; 241 NYLJ. 85 [Sup. Ct. Nassau Co.]; *Cole v Ramp*

Motors, Inc., 2012 NY Misc. LEXIS 5575; 2012 NY Slip Op 32934u [Sup. Ct. Suffolk Co.]

While Enterprise did establish that it was engaged in the business or trade of leasing motor vehicles, Enterprise failed to provide an affidavit or any other evidence indicating that it maintained the vehicle in a non-negligent manner (*see Luma v ELRAC*, 19 Misc. 3d 1138(A), 19 Misc. 3d 1138A, 862 N.Y.S.2d 815, 2008 NY Slip Op 5106U [2008]). Here, because no affidavit from a person with knowledge was submitted in support of Enterprise's motion indicating that it was not negligent in the repair and maintenance of the vehicles it leases and that it was the sole responsibility of the lessee to maintain the subject vehicle (*see Khan v MMCA Lease, Ltd.*, 100 AD3d 833, 834 [2d Dept. 2012]), Enterprise has failed to sustain its burden as cross-movant in demonstrating, as a matter of law, that it is entitled to the protection of the "Graves Amendment."

Thus, the defendants may renew their motion, within forty-five (45) days from the date of this Order.

Turning now to the plaintiffs' motion, the motion is granted in part and denied in part.

Plaintiffs move for an order granting summary judgment in their favor as against defendants, on the issue of liability, pursuant to CPLR 3212, and for an order, pursuant to CPLR 3211(b), striking the defendants' first, second, eleventh, and twelfth affirmative defenses.

The evidence proffered in support of the motion, which evidence includes, *inter alia*, *an affidavit of plaintiff/operator Chiane Nicole Suddler reveals that: there was a rear-end collision wherein a vehicle she operated was stopped for approximately five (5) seconds, when it was struck in the rear by a vehicle owned by defendant Enterprise, registered to defendant Unity Electric Co., Inc., and operated by defendant Stephanie M. Eagle.*

It is well established law that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (*Reed v New York City Transit Authority*, 299 AD2 330 [2d Dept 2002]; *See also Velazquez v Denton Limo, Inc.*, 7 AD3d 787 [2d Dept 2004],

stating that: “[a] rear end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the moving vehicle, requiring the operator of that vehicle to come forward with a non-negligent explanation for the accident.)”

The party opposing the motion must present sufficient evidence establishing that a genuine issue of fact exists (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendants have failed to present a triable issues of fact in opposition to the motion. Defendants have failed to adduce proof in admissible form sufficient to oppose the relief requested, having submitted no affidavit by anyone with personal knowledge of the facts (*see* CPLR 3212). It is well settled that an affirmation from a party’s attorney who lacks personal knowledge of the facts, is of no probative value (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Wisnieski v Kraft*, 242 AD2d 290 [2d Dept 1997]; *Lupinsky v Windham Constr. Corp.*, 293 AD2d 317 [1st Dept 2002]). Pursuant to Vehicle and Traffic Law § 1129(a), defendant Eagle was under a duty to maintain a safe distance between her vehicle and plaintiffs’ vehicle and her failure to do so in the absence of an adequate, non-negligent explanation is deemed negligence as a matter of law (*Leal v Wolff*, 224 AD2d 392 [2d Dept 1996]).

Additionally, the Court finds that the defendants’ argument that summary judgment is premature because discovery has not been completed and the depositions have not yet been held, to be unavailing. Defendants have failed to demonstrate that facts essential to oppose the motion may exist but cannot then be stated. “Mere hope that somehow [a party] will uncover evidence that will prove a case provides no basis pursuant to CPLR 3212(f) for postponing a determination of a summary judgment motion.” (*Plotkin v Franklin*, 179 AD2d 746 [2d Dept 1992]) (internal citations omitted).

Thus, as there are no triable issues of fact regarding liability as to defendants Unity Electric Co., Inc. and Stephanie M. Eagle., the plaintiffs are entitled to summary judgment on the issue of liability ONLY as against them. The branch of the motion seeking summary Judgment is denied as to defendant Enterprise.

Furthermore, as the record reveals no evidence that the plaintiffs caused or contributed to the happening of the accident in any way, all claims of comparative

negligence shall be dismissed. As such, the defendants' first and second affirmative defenses alleging comparative negligence shall be dismissed.

Regarding those branches of plaintiffs' motion seeking to dismiss the eleventh affirmative defense of lack of personal jurisdiction and twelfth affirmative defense of failure to state a cause of action, same are granted, as the plaintiffs established a *prima facie* case in support of same and defendants' failed to sufficiently rebut plaintiffs' arguments.

Accordingly, based upon the foregoing, it is,

ORDERED that the plaintiffs' motion is granted in part and denied in part, in that: it is

ORDERED that the branch of plaintiff's motion seeking summary judgment on the issue of liability as against defendants Unity Electric Co., Inc. and Stephanie M. Eagle is granted; and it is further

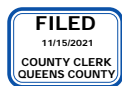
ORDERED that the branch of the motion seeking summary judgement on the issue of liability as against defendant Enterprise Fleet Management Inc. is denied; and it is further

ORDERED that the branches of plaintiff's motion seeking to dismiss defendants' first and second affirmative defenses alleging comparative are granted; and it is further

ORDERED that those branches of plaintiffs' motion seeking to dismiss the eleventh affirmative defense of lack of personal jurisdiction and twelfth affirmative defense of failure to state a cause of action are granted; and it is further

ORDERED that the defendants' cross-motion is denied, without prejudice, with leave to renew, within forty-five (45) days from the date of this Order

Dated: November 9, 2021



A handwritten signature in black ink, appearing to read "T. Dufficy".

TIMOTHY J. DUFFICY, J.S.C.