

Barker v EAN Holdings LLC
2022 NY Slip Op 30365(U)
February 4, 2022
Supreme Court, New York County
Docket Number: Index No. 159482/2018
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 22M

Justice

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GALE BARKER, NOAH SULLIVAN,
Plaintiff,

INDEX NO. 159482/2018
MOTION DATE 08/16/2021
MOTION SEQ. NO. 006

- v -

EAN HOLDINGS LLC, MID BAY FORD LINCOLN/EAN HOLDINGS, ENTERPRISE LEASING COMPANY OF PHILADELPHIA, LLC, ELRAC LLC D/B/A ENTERPRISE RENT A CAR, ENTERPRISE HOLDINGS INC. D/B/A ENTERPRISE RENT-A-CAR, CARSON JACKSON

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff Gale Barker ("plaintiff") moves, pursuant to CPLR §3025, to amend the complaint and verified bill of particulars to plead allegations of negligent entrustment, which is denied for the reasons stated herein.

This personal injury action arises out of a motor vehicle accident that occurred on June 16, 2018 when the vehicle, operated by defendant Carson Jackson ("defendant Jackson") and owned by the Enterprise defendants, was involved in a collision with the vehicle in which plaintiff was a passenger. The incident occurred near South Street and Pike Slip in New York, N.Y. The parties have since settled the claims brought by co-plaintiff Noah Sullivan. (See, NYSCEF Doc. No. 131).

Here, plaintiff moves separately to amend the complaint and the verified bill of particulars to allege a claim for negligent entrustment. Plaintiff argues that defendant Jackson possessed a "restricted" driver's license at the time he rented the vehicle from the Enterprise defendants. In addition, plaintiff contends that the Enterprise defendants made no inquiry into the restriction or his driving record.

In support of the motion, plaintiff submitted defendant Jackson's deposition testimony, the deposition testimony of defendants' witness, Daniel Madden (Madden), and printouts pertaining to restricted licenses in New York and defendant Jackson's driving record. Defendant Jackson testified at his deposition that he had a "restricted license" in June 2018 because of his child support payment arrears. (See, NYSCEF Doc No. 109, Stephen A. Strauss [Strauss] affirmation, exhibit E [Jackson tr] at 30-31). The term "restricted license" appeared across the top of defendant Jackson's license (id. at 38). Further, defendant Jackson testified that the restrictions allowed him, "driving privileges only at certain times, and going to work, and essential things that you have to do (sic)." (id. at 24). Defendant Jackson also testified that when he rented the vehicle, the Enterprise employee never asked any questions about his license. (id. at 19).

The Enterprise defendants' witness, Madden, testified that Enterprise requires a potential renter to have a valid driver's license in order to rent its vehicles. (See, *NYSCEF Doc No. 110, Strauss affirmation, exhibit F [Madden tr]* at 17). Madden testified that Enterprise would not "knowingly" rent a vehicle to a customer without a license or one with a suspended license. (*id.*) Madden testified that when a customer presents an Enterprise employee with a restricted driver's license, the employee is required to "ask what the restrictions are." (*id.* at 18-19). If the restriction relates to "any type of interlock device with interlock restrictions," then that is "the only time [Enterprise] we're not allowed to rent that car to that individual." (*id.*)

In further support of the motion, plaintiff submits the printout from the New York State Department of Motor Vehicles website detailing the types of driving activities a driver with a restricted license may engage in, which include driving "to and from your place of employment," "during the hours of your employment, if your occupation requires the operation of a motor vehicle," and "to and from a medical appointment which is part of a necessary medical treatment for you or a member of your household. (See, *NYSCEF Doc No. 112, Straus affirmation, exhibit H* at 1). Plaintiff also submits that an abstract of defendant Jackson's driving history, which revealed that his license has been suspended or revoked more than once, although many of the suspensions occurred **after** the date of the subject accident. (See, *NYSCEF Doc No. 113, Strauss affirmation, exhibit I*). (Emphasis added). Plaintiff contends that defendant Jackson's license was suspended on Oct 12, 2017, which was eight months prior to the accident.

In opposition, the Enterprise defendants argue, *inter alia*, that the cause of action of negligent entrustment should not be added this case. The Enterprise defendants contend that co-defendant Jackson provided a facially valid and restricted driver's license when he rented the vehicle with Enterprise. The Enterprise defendants argue that Enterprise was limited to verifying the facial validity of defendant Jackson's license, and that Enterprise has no legal duty beyond verifying that defendant Jackson's license was facially valid. In addition, the Enterprise defendants argue that there is no cognizable legal duty under an action for negligent entrustment for a rental vehicle. To further support their position, the Enterprise defendants submit defendant Jackson's deposition testimony where he denies that his vehicle came into contact with plaintiff's vehicle. (*NYSCEF Doc No. 118, Joseph J. Karlya [Karlya] affirmation, exhibit A [Jackson tr]* at 46). The Enterprise defendants also submit a copy of Jackson's rental agreement with Enterprise. (*NYSCEF Doc No. 119, Karlya affirmation, exhibit B*).

Discussion

It is well settled that "[l]eave to amend a complaint should be freely given absent prejudice or surprise so long as the proposed claims are not palpably insufficient or devoid of merit." *Brummer v. Wey*, 187 A.D.3d 566, 566 (1st Dep't 2020); *Davis v. South Nassau Communities Hosp.*, 26 N.Y.3d 563, 580 (2015). "To obtain leave, a plaintiff must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment." *Velarde v. City of New York*, 149 A.D.3d 457, 457 (1st Dep't 2017). The party opposing the motion bears the burden of demonstrating prejudice or surprise, or that the proposed amendment is devoid of merit. See, *Lennon v. 56th & Park (NY) Owner, LLC*, 199 A.D.3d 64, 71 (2d Dep't 2021); *Peach Parking Corp. v. 346 W. 40th St., LLC*, 42 A.D.3d 82, 86 (1st Dep't 2007) [stating that the party opposing the motion must establish that the facts alleged cannot support the amendment].

Relevant here is the Safe, Accountable, Flexible, Efficient Transportation Equity Act (the "Graves Amendment") (49 USC §30106), which "prohibits imposition of vicarious liability on vehicle lessors for injuries resulting from the negligent use or operation of the leased vehicle." *Jones v. Bill*, 10 N.Y.3d 550, 553 (2008), *cert dismissed sub nom. DCFS Trust v. Jones*, 555 U.S.

1028 (2008). Thus, the Graves Amendment shields parties engaged in the trade or business of renting, or leasing motor vehicles from being held vicariously liable “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 – (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).” *Villa-Capellan v. Mendoza*, 135 A.D.3d 555, 556 (1st Dep’t 2016) [internal quotation marks and citation omitted]. However, the Graves Amendment does not insulate a lessor from claims predicated upon its own negligence, such as failure to repair or maintain the vehicle. *See, Alfaro v. Lavacca*, 186 A.D.3d 1591, 1592 (2d Dep’t 2020); *Collazo v. MTA-New York City Tr.*, 74 A.D.3d 642, 643 (1st Dep’t 2010).

In terms of negligent entrustment, “[a]n owner of a motor vehicle may be liable for negligent entrustment if it was negligent in entrusting it to a person it knew, or in exercise of ordinary care should have known, was not competent to operate it.” *Kornfeld v. Chen Hua Zheng*, 185 AD3d 420, 420 (1st Dep’t 2020). To prevail on a claim for negligent entrustment, the plaintiff must show that the defendant had “**some special knowledge concerning a characteristic or condition peculiar to the [person to whom a particular chattel is given]**, which renders [that person’s] use of the chattel unreasonably dangerous ... or some special knowledge as to a characteristic or defect peculiar to the chattel which renders it unreasonably dangerous.” *Byrne v. Collins*, 77 A.D.3d 782, 784 (2d Dep’t 2010), *lv denied* 17 N.Y.3d 702 (2011) [citations omitted] (emphasis added).

In the case at hand, the Enterprise defendants, in their opposition papers, have demonstrated that the proposed amendment lacks merit. Here, this court finds that plaintiff has not set forth a legal duty obligating defendants to do more than check for a facially valid license based on the plaintiff’s contentions that the Enterprise defendants breached a duty of care by failing to investigate the circumstances of Jackson’s restricted license. *See, Byrne v. Collins, supra* [reasoning that the plaintiff failed to raise a triable issue of fact as to “whether or not the appellants possessed special knowledge concerning a characteristic or condition peculiar to [the defendant] that rendered his use of the truck unreasonably dangerous,” where abstracts of the defendant’s driving record revealed he had a valid restricted license]; *Sigaran v. ELRAC, Inc.*, 22 Misc. 3d 1101[A], 2008 NY Slip Op 52569[U], *6-7 (Sup Ct, Bronx County 2008) [granting dismissal where the “[p]laintiffs failed to cite any legal authority that ELRAC was under an obligation to check Fernandez’s driver’s record beyond verifying that he had a valid driver’s license”]; *Vedder v Cox*, 18 Misc. 3d 1142[A], 2008 NY Slip Op 50408[U], *6 [Sup Ct, Nassau County 2008] [granting dismissal where the defendant driver had a valid license that was not under suspension when he rented the vehicle, and the plaintiff failed to cite any legal authority to support the contention that defendants had a duty to investigate his driving record].

Furthermore, the plaintiff actually establishes that defendant Jackson possessed a valid driver’s license, *albeit* with restrictions, based on Jackson’s deposition testimony. To the extent plaintiff asserts that Enterprise employees failed to inquire as to what specific restrictions were imposed upon defendant Jackson, a violation of an internal policy does not constitute “actionable negligence.” *See, Byrne v. Collins, supra* at 785. Furthermore, the restrictions described by defendant Jackson at his deposition do not implicate an “interlock” restriction, which would warrant the Enterprise defendants to not issue the rental vehicle, based upon their policy. Further, the plaintiff points to no other evidence demonstrating that the Enterprise defendants were aware defendant Jackson was “incapable of operating a motor vehicle in a safe and careful manner.” *See, Pinkerton v. Pinkerton*, 2010 NY Slip Op 30453[U], *5 (Sup Ct, Queens County 2010) [rejecting

the claim that a driver who had his license for only three to four years, and drove twice a week were indicators of his inexperience, or that he would drive in an unreasonably dangerous manner]. In the absence of a specific characteristic or condition peculiar to defendant Jackson that would have rendered his use of the vehicle unreasonably dangerous, the negligent entrustment cause of action lacks merit. See, *Monette v. Trummer*, 105 A.D.3d 1328, 1330 (4th Dep't 2013), *aff'd* 22 N.Y.3d 944 (2013). Furthermore, this court finds that although, defendants have not demonstrated that have been prejudiced or caught by surprise of plaintiff pursuing this claim, however, plaintiff has failed to demonstrate the right to obtain leave and to amend the complaint in that plaintiff failed to submit evidentiary proof to warrant the negligent entrustment cause of action.

Accordingly, it is


ORDERED that the motion of plaintiff Gale Barker to amend the complaint and the verified bill of particulars to plead allegations of negligent entrustment is **DENIED**; 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, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

2/4/2022
DATE


LISA S. HEADLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	