

<b>Muslar v Hall</b>
2022 NY Slip Op 30757(U)
March 21, 2022
Supreme Court, New York County
Docket Number: Index No. 160598/2020
Judge: James G. Clynnes
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JAMES G. CLYNES PART 22M**

*Justice*

-----X

KENNETH MUSLAR,

Plaintiff,

- v -

KEVIN W HALL, ASPLUNDH CONSTRUCTION, LLC,  
GLOBAL RENTAL CO., INC., GROWTH DEVELOPMENT  
MARKETING, INCORPORATED

Defendant.

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INDEX NO. 160598/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 107, 108, 109, 110, 111, 112, 113

were read on this motion to/for DISMISS (GRAVES) & CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151

were read on this motion to/for JUDGMENT – SUMMARY (LIABILITY ONLY).

Upon the foregoing documents, and following oral argument on March 1, 2022, the motion by defendants Global Rental Co., Inc., (“Global”) and Growth Development Marketing, Incorporated (“GDM”), seeking an order of dismissal as against them pursuant to the Graves Amendment and seeking an order changing venue for the remaining parties to Suffolk County along with plaintiff’s cross-motion to retain venue in New York County (motion sequence #2) and plaintiff’s motion for an order granting summary judgment on the issue of liability only in his favor and against the defendants (Motion Sequence #3) is decided as follows.

In this personal injury action, plaintiff seeks recovery for serious injuries allegedly sustained as a result of a March 2, 2018, motor vehicle accident between the vehicle in which plaintiff was a passenger and a vehicle owned by defendants Global and GDM, leased by defendant Asplundh Construction, LLC, and operated by defendant Kevin W. Hall. The accident is alleged to have occurred when the defendant vehicle made an illegal u-turn from the

westbound side traffic lane of the Northern State Parkway and entered the eastbound traffic lane of the Northern State Parkway where it struck the vehicle in which plaintiff was a passenger.

**Defendants' motion to dismiss and to change venue and Plaintiff's cross-motion (#002)**

Defendants Global and GDM move for summary judgment dismissing the complaint against it, arguing that they are vehicle rental companies and as such they are 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 vehicles who are in the business of renting or leasing motor vehicles for the negligence of the drivers of those vehicles. Here, Global and GDM established that they leased the subject vehicle to co-defendant Asplundh Construction, LLC, and that co-defendant Kevin W. Hall was operating the vehicle at the time of the accident and that they are therefore entitled to summary judgment as a matter of law, pursuant to the Graves Amendment, and the burden shifts to plaintiff and co-defendants to raise an issue of fact. Plaintiff's opposition does not raise a triable issue of fact sufficient to preclude summary judgment, based upon the Graves Amendment, in favor of the defendants Global and GDM. Defendants' motion is not opposed by the co-defendants. As such, the motion for summary judgment pursuant to the Graves Amendment and dismissal as against defendants Global and GDM is granted.

Upon the dismissal of the complaint and all cross-claims against the defendants Global and GDM, there are no remaining parties with ties to New York County and all the remaining parties have ties to Suffolk County. Accordingly, the Court exercises its discretion to grant that portion of the defendants' motion to change venue for the remaining parties to Suffolk County and to deny plaintiff's cross-motion to retain venue in New York County.

**Plaintiff's motion for summary judgment on the issue of liability (#003)**

A violation of the Vehicle & Traffic Law constitutes negligence as a matter of law" (*Vainer v DiSalvo*, 79 AD3d 1023, 1024 [2d Dept 2010]). Plaintiff's affidavit, in which he avers that he was a front seat passenger travelling eastbound in the left traffic lane on the Northern State Parkway when the vehicle operated by defendant Kevin W. Hall and leased by defendant Asplundh Construction LLC suddenly made an illegal u-turn across the grassy center median, entered the eastbound lane and hit the plaintiff's vehicle establishes a prima facie case of negligence against defendants Asplundh Construction LLC and Kevin W. Hall (*see VTL 1161 [a]; 1128 [a]; 1163 [a]; 17 NYCRR 182.40 [a]; Rodriguez v City of New York*, 31 NY3d 312

[2018]). Defendant's opposition, which includes an affidavit from defendant Hall in which he admits that as he entered the roadway the front of his truck struck the side of a vehicle passing in the left lane, does not raise an issue of fact sufficient to preclude summary judgment on the issue of liability in favor of the plaintiff and against defendants Asplundh Construction, LLC and Kevin W. Hall. Defendants' opposition does not provide a non-negligent explanation for the cause of the accident, defendant's failure to yield the right of way to the plaintiff's vehicle, and therefore fails to raise a triable issue of fact on the issue of liability.

Defendant speculates as to whether plaintiff could have avoided the accident. While a party with the right of way may be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident (*Gaudio v City of New York*, 189 AD3d 1546, 1548 [2d Dept 2020]), defendant fails to submit any evidence to support such a contention. In addition, a plaintiff need not prove freedom from comparative negligence in order to obtain summary judgment on liability (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Silverio v Ford Motor Co.*, 183 AD3d 470, 471 [1st Dept 2020]).

Accordingly, for the foregoing reasons, plaintiff's motion for summary judgment on liability only is granted in favor of plaintiff and against the remaining defendants Kevin W. Hall and Asplundh Construction, LLC.

Based upon the foregoing, it is hereby

ORDERED that the portion of the motion (motion sequence #2) by defendants Global Rental Co., Inc., and Growth Development Marketing, Incorporated, seeking summary judgment and to dismiss this action as against them is granted and this action is dismissed as to defendants Global Rental Co., Inc., and Growth Development Marketing, Incorporated only; and it is further

ORDERED that any cross-claims against said defendants are dismissed; and it is further ORDERED that the said claims against co-defendants Kevin W. Hall and Asplundh Construction, LLC are severed and the balance of the action shall continue; and it is further

ORDERED that the motion by plaintiff (motion sequence #3) for an order, pursuant to CPLR 3212, granting summary judgment on the issue of liability only in favor of plaintiff and against defendants Kevin W. Hall and Asplundh Construction, LLC, is granted; and it is hereby

ORDERED that the motion to change venue to Suffolk County (motion sequence #2) is granted; and it is further

ORDERED that the plaintiff's cross-motion to retain venue in New York County (motion sequence #2) is denied; and it is further

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Suffolk; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Suffolk and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Suffolk County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptmanh](http://www.nycourts.gov/suptmanh)).

3/21/2022  
DATE

  
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JAMES G. CLYNES, J.S.C.

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