

<b>Monk v Luna</b>
2022 NY Slip Op 31024(U)
March 29, 2022
Supreme Court, New York County
Docket Number: Index No. 450721/2021
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

DAMON MONK, SHAAKIRYAH RAMKISSOON
Plaintiff,
- v -
ALBERTO LUNA, LEASE PLAN USA LT,
Defendant.
INDEX NO. 450721/2021
MOTION DATE 11/10/2021
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 78, 80, 81

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is hereby ORDERED that the movant-plaintiffs motion for an Order, pursuant to 22 NYCRR 130-1.1(a) and CPLR §3212, granting plaintiffs summary judgment against defendants on the issue of liability only, and dismissing the counterclaim brought against defendant Monk, is denied. The defendant Lease Plan USA, LT, cross-moved for an Order to dismiss the complaint against them, arguing that it is not vicariously liable for the alleged motor vehicle accident pursuant to the Graves Amendment, 49 U.S.C § 30106, which is granted.

In support of the motion, movants adopts the procedural history set forth in the affirmation to support motion Seq. No. 001. Plaintiffs argue that defendant Luna was negligent, as a matter of law, because defendant Luna reversed his vehicle into plaintiffs' non-moving vehicle. In addition, plaintiffs argue that defendant Lease Plan USA LT, as the owner of the vehicle, is also liable for the subject accident. Plaintiffs also argue that the defendants' emergency doctrine argument, as raised in the opposition to plaintiffs' motion for summary judgment in Seq. No. 001, does not apply here because it was defendant Luna who decided to reverse his vehicle to alert the police of a fallen man. In addition, plaintiffs argue that defendants' argument that the plaintiff-driver Monk caused or contributed to the accident and that defendant Luna did not observe any vehicle, because plaintiffs' vehicle was between two lanes when it when it was struck, is frivolous. Lastly, the movants are requesting a hearing to determine costs and legal fees associated with defending the defendants' alleged frivolous argument.

Defendants filed opposition to plaintiffs' motion for summary judgment, as well as a cross-motion for an Order, pursuant to CPLR §3212, granting summary judgment and dismissing all claims against defendant Lease Plan USA, LT due to the Graves Amendment. In opposition, defendants argue that plaintiffs' motion must be dismissed, inter alia, because plaintiffs' counsel failed to attach any relevant pleadings as exhibits to the motion; plaintiffs' counsel did not attach a supporting affidavit to the motion; the motion is premature; and defendants' argue that there are issues of fact to be decided by the jury as to whether plaintiff Monk was a proximate cause of the accident by having his vehicle within two lanes of traffic. Defendants also argue that defendant-driver was faced with an emergency situation at the time of the accident, when an older man fell

on his face directly in front of his vehicle. Further, defendants argue that plaintiffs' request for costs and sanctions is highly inappropriate.

In support of their cross-motion, defendants argue that the Graves Amendment prohibits a claim of vicarious liability against co-defendant, Lease Plan USA, LT, and thus, Lease Plan USA LT should be dismissed from the lawsuit. Defendants contend that there is no specific evidence of mechanical failure of the subject vehicle operated by defendant Luna. Defendants submit the Master Lease Agreement, as Exhibit F, between Lease Plan USA Inc., as lessor, and Philips North America LLC, as lessee, dated August 1, 2019. (See, NYSCEF Doc. No. 77). Defendants also submit, as Exhibit G, the affidavit of Matthew Patterson, who is the Executive Vice President, General Counsel and Secretary at Lease Plan U.S.A. Inc. In his affidavit, Mr. Patterson states that under the terms of the Master Lease Agreement, Philips North America LLC is required to maintain an automobile liability insurance policy that provides coverage to defendant Albert Luna, and that on March 16, 2020 (the date of the accident), Philips North America, LLC's insurer was Safety National Casualty Corp. Mr. Patterson attests that Lease Plan U.S.A Inc. nor Lease Plan U.S.A., LT were involved in any way with the hiring and supervision of drivers and employees of Philips North America LLC. Further, Mr. Patterson states that the subject vehicle operated by defendant Luna was a 2020 Chevrolet Equinox that was owned by Lease Plan USA, LT and leased to Philips North America, LLC by Lease Plan USA, LT. Mr. Patterson also attests that at the time of the accident, defendant Luna was an employee of Philips North America, LLC.

In opposition to defendants' cross-motion, plaintiffs argue that defendant Lease Plan failed to attached any evidence on the operating condition of the vehicle, and both defendant Luna's affidavit and Mr. Patterson's affidavit were silent as to the operating condition of the defendants' vehicle. Thus, defendants failed to eliminate all triable issues of fact on their summary judgment motion. Furthermore, in reply to defendants' opposition to plaintiffs' motion for summary judgment and sanctions, plaintiffs highlight their arguments that the emergency doctrine does not apply in this case.

It should be noted that this court rendered a Decision and Order on Motion Seq. 001, seeking a similar relief from the movants seeking an Order granting plaintiffs' summary judgment on the issue of liability against the defendants. The Court's decision to deny the plaintiffs motion for summary judgment because there are issues of fact as to the happening of the accident, also applies to the instant motion. (See, Decision and Order on Motion Seq. 001, dated March 28, 2022). For the reasons in this court's March 28, 2022 decision, plaintiffs' motion for summary judgment is denied.

Furthermore, plaintiffs argue in the instant motion that defendant Lease Plan USA, LT is liable as the owner of the subject vehicle operated by defendant Luna. To the contrary, defendants contend, in the cross-motion, that defendant Lease Plan USA should be dismissed from this action, under the Graves' Amendment since it leased the subject vehicle involved in the motor vehicle accident.

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).

Here, the plaintiffs have failed to explain how the defendant Lease Plan USA, LT was negligent in the maintenance, repair and inspection of the subject truck, and plaintiffs failed to proffer arguments to demonstrate the defendant Lease Plan USA, LT did not lease the truck to the non-party and employer of defendant Luna, Philips North America, LLC. In support of the motion, the defendant Lease Plan USA, LT submitted, *inter alia*, the Master Lease Agreement between Lease Plan USA Inc., as lessor, and Philips North America LLC, as lessee, dated August 1, 2019. (See, NYSCEF Doc. No. 77). Defendants also submitted the affidavit of Matthew Patterson, who is the Executive Vice President, General Counsel and Secretary at Lease Plan U.S.A. Inc. Mr. Patterson stated, in his affidavit, that the subject vehicle operated by defendant Luna was a 2020 Chevrolet Equinox that was owned by Lease Plan USA, LT and leased to Philips North America, LLC by Lease Plan USA, LT. Mr. Patterson also attests that at the time of the accident, defendant Luna was an employee of Philips North America, LLC. Here, the plaintiffs have failed to raise any genuine issues of triable fact or establish an exception to the Graves Amendment with competent evidence.

For the reasons stated herein, the motion for summary judgment on this issue of liability filed by plaintiff Monk is denied, and the cross motion by defendant Lease Plan USA, L.T. is granted.

Accordingly, it is

**ORDERED** that plaintiffs summary judgment against defendants on the issue of liability only, and dismissing the counterclaim brought against defendant Monk, is DENIED; and it is further

**ORDERED** that the cross-motion of defendant Lease Plan USA, L.T. to dismiss the complaint herein is GRANTED, and the complaint is dismissed in its entirety as against defendant Lease Plan USA, L.T. **only**, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

**ORDERED** that any and all crossclaims against said defendant Lease Plan USA, L.T. are dismissed; and it is further

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

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

**ORDERED** that within 30 days of entry, plaintiffs shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

*Lisa S. Headley*  
LISA S. HEADLEY, J.S.C.

3/29/2022  
DATE

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