

Wolkoff v PV Holding Corp.

2022 NY Slip Op 33695(U)

October 25, 2022

Supreme Court, New York County

Docket Number: Index No. 159305/2018

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

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JUDITH WOLKOFF,

Plaintiff,

- v -

PV HOLDING CORPORATION, AVIS CAR RENTAL GROUP,
LLC, AVIS RENT A CAR SYSTEM, LLC, KENNETH S.
SUSSMANE

Defendant.

-----X

INDEX NO. 159305/2018
MOTION DATE 09/16/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 61, 62, 63, 64, 84, 85, 91

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by defendants PV Holding Corporation, Avis Car Rental Group, Avis Rent A Car System, LLC (collectively Avis) for an order granting summary judgment and dismissal of the complaint against Avis pursuant to the Graves Amendment (49 USC 30106) is decided as follows:

Plaintiff seeks recovery for injuries sustained in a single motor vehicle accident that occurred on September 8, 2017. Plaintiff was a passenger in a rental vehicle owned by Avis and leased to and operated by plaintiff's husband Eugene Wolkoff, substituted here by defendant Kenneth Sussmane, as Administrator for the Estate of Eugene Arnold Wolkoff, deceased (the deceased driver/lessee). The deceased driver/lessee was operating the vehicle, with plaintiff as a passenger when the accident occurred. It is alleged that while the deceased driver/lessee was executing a "K-turn" in an outdoor parking lot, the vehicle jumped the curb, collided with a light pole and caught fire resulting in plaintiff's injuries and the death of the deceased driver/lessee.

Plaintiff's complaint was discontinued against the defendant Kenneth S. Sussmane as Administrator for the Estate of Eugene Arnold Wolkoff, deceased, pursuant to a stipulation of discontinuance, dated December 8, 2021 (NYSCEF DOC NO 106).

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to

demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*Id.*). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept. 2012]). Once a movant meets this initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). When deciding a summary judgment motion, the role of the Court is to make determinations as to the existence of bona fide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 NY3d 499 [2012]). If the trial judge is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Bush v. Saint Claire's Hospital*, 82 NY2d 738 [1993]).

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 from the negligence of the drivers, provided there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate owner) (49 USC 30106; *Villa-Capellan v Mendoza*, 135 AD3d 555 [1st Dept. 2016]). A claim based upon negligent maintenance is not barred by the Graves Amendment because the Graves Amendment does not absolve leasing companies of liability for their own negligence (*Collazo v MTA-New York City Tr.*, 74 AD3d 642 [1st Dept 2010]).

Avis contends that there is no evidence of any failure or defective condition of the vehicle about which the defendants created, knew, or should have known. Avis also notes that they are in the business of leasing/renting vehicles and as such are protected from vicarious liability claims under the Graves Amendment. Plaintiff and co-defendant, Kenneth S. Sussmane filed opposition papers, in which both parties contend that there are issues of fact regarding Avis’ negligence in the maintenance of the vehicle and that Avis has failed to establish that they were free from any active negligence and are therefore not entitled to summary judgment.

Here, to establish its prima facie entitlement to judgment as a matter of law in this action, Avis must prove not only that it is in the business of leasing/renting vehicles and that the vehicle involved in the accident was leased to the deceased driver/lessee, but also that it did not negligently maintain the Avis vehicle (*Collazo*, 74 AD3d 64). Here, the affidavit of Avis representative Jeanne

Motosko (the Motosko Affidavit) (NYSCEF DOC NO 51) and the rental agreement (NYSCEF DOC NO 41) establish that at relevant times, Avis was engaged in the business of renting vehicles to the public, and that it rented the subject vehicle to deceased driver/lessee at the time of this accident and that the deceased driver/lessee was not one of its employees. The foregoing demonstrates that Avis is entitled to the protection of the Graves Amendment (*see Hernandez v Sanchez*, 40 AD3d 446 [1st Dept 2007]; USC 30106[a][1]) for claims of vicarious liability relating to the negligence of the deceased driver/lessee of the vehicle. However, the Graves Amendment does not apply where, as in this case, a plaintiff seeks to hold the defendant-owner liable for its own negligence (*see Collazo*, 74 AD3d 64). The Complaint alleges that the defendants were “negligent, careless and reckless in the ownership, operation, management, maintenance, supervision, use and control of the aforesaid vehicle...” (Pl. Complaint at ¶ 6).

On the issue of negligent maintenance, the Motosko Affidavit avers that Avis did not commit any act or acts of negligence or criminal wrongdoing that caused or contributed to the happening of this motor vehicle accident; that the subject rental vehicle did not have any mechanical defects affecting its functioning or operation that contributed to the accident. Another Avis representative, John Kuckak, a Body Damage Manager and former Manager of the Maintenance Department for Avis, testified during his examination before trial (EBT) (NYSCEF DOC NO 75) that part of his job is to represent Avis at depositions; that he has been an Avis employee for twenty-three years and that he did not know of the practice or procedure of Avis regarding maintenance and setup prior to placing a vehicle into service. Kuckak testified that “(b)efore a car is rented, everything that needs to be done to get the car rental ready is done,” without outlining or specifying what procedures are completed (Kuckak EBT, at 31) (compare *Reifsnnyder v Penske Truck Leasing Corp.*, 140 AD3d 572 [1st Dept 2016], where defendant established that the accident was not caused by negligent maintenance by submitting evidence that it regularly maintained the truck, including the brakes, testimony from the employee who made repairs to the truck that he had inspected the brakes two months before the accident occurred and found no defect, and that there was no report or other evidence of any brake failure before the accident). Kuckak testified, in relation to the vehicle’s maintenance history, that the vehicle passed New York State inspection and that any regular maintenance according to the manufacturer’s recommendations would be noted on the maintenance history. The one-page maintenance history attached to defendants’ submission does not indicate any regular maintenance occurred (NYSCEF

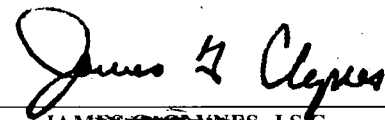
DOC NO 45). Kuckak testified that he did not know of how Avis maintained and checked systems within the vehicle, such as satellite radio or lane-change notifiers, and that he was not aware of any additional notations that would be made if those systems were checked. Kuckak’s testimony, as well as the one-page maintenance history and other documents offered by Avis are not sufficient to establish that the accident was not caused by any alleged negligent maintenance on the part of Avis. Therefore, Avis has failed to eliminate all triable issues of fact with respect to plaintiff’s allegations that Avis negligently maintained the subject vehicle (*Villa-Capellan v Mendoza*, 135 AD3d 555). Accordingly, it is

ORDERED that the motion by defendants PV Holding Corporation, Avis Car Rental Group, Avis Rent A Car System, LLC, pursuant to the Graves Amendment for summary judgment and dismissal of the complaint against them is denied.

This constitutes the Decision and Order of the Court.

10/25/2022

DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: