

<b>Golding v Hub Truck Rental Corp.</b>
2022 NY Slip Op 34132(U)
December 1, 2022
Supreme Court, Kings County
Docket Number: Index No. 519624/2021
Judge: Carl J. Landicino
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2022 DEC -7 AM 9:17

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1<sup>st</sup> day of December, 2022.

PRESENT:  
HON. CARL J. LANDICINO,  
Justice.

-----X  
ROY GOLDING,

Index No. 519624/2021

*Plaintiff,*

-against-

DECISION AND ORDER

Motion Sequence #1

HUB TRUCK RENTAL CORP., DELAWARE  
EQUIPMENT SERVICES, INC., RAVEN  
TRANSPORT INC., and MANUEL LUIS  
BATISTA INOA,

*Defendants.*

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed .....	15-22,
Opposing Affidavits (Affirmations).....	41, 42,
Reply and Sur-Reply Affidavits (Affirmations).....	44

After a review of the papers and oral argument, the Court finds as follows:

The instant action is a claim for alleged personal injuries arising from a motor vehicle collision that purportedly occurred on September 8, 2020. Plaintiff Roy Golding (hereinafter the "Plaintiff") alleges in his Complaint that he suffered personal injuries when the vehicle (the "Vehicle") purportedly operated by Defendant Manuel Luis Batista Inoa (hereinafter "Manuel") and owned by Defendant Hub Truck Rental Corp. (hereinafter "Hub"), Defendant Delaware Equipment Services, Inc. (hereinafter "Delaware Equipment"), and Defendant Raven Transport Inc. (hereinafter "Raven Transport") (hereinafter collectively the "Defendants"), collided with his vehicle while he was on Sutter Avenue at or near its

intersection with Sackman Street, in Brooklyn, New York. Plaintiff further alleges that Defendant Manuel was acting within the scope of his employment with the remaining Defendants.

Defendant Hub now moves (Motion Sequence #1) for an order pursuant to CPLR 3211(a)(2) and (7) and 3212(a) dismissing the Complaint against Defendant Hub for lack of subject matter jurisdiction and pursuant to the Graves Amendment (49 USC § 30106). Defendant Hub relies on the affidavit of Jennifer Geller (Hub Insurance Manager), a Leasing Agreement, and a certified Police Accident Report to establish that Defendant Hub was the owner of the Vehicle, (which was leased to Raven Transport), and is engaged in the trade or business of renting or leasing motor vehicles. As such, Hub contends that it is not subject to vicarious liability for the accident at issue.

Plaintiff opposes the motion. Plaintiff contends that Defendant Hub has not met its *prima facie* burden establishing its ownership and leasing of the Vehicle.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it “should only be employed when there is no doubt as to the absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341 [1974]. The proponent for summary judgment 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. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985]. “In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party.” *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 NY3d 312, 320, 101 N.E.3d 366, 371 [2018].

Generally, “[a]n owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), 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).” 49 USCS § 30106(a).

Turning to the merits of the instant motion, the Court finds that Defendant Hub has failed to provide sufficient evidence establishing that Defendant Hub is entitled to dismissal of the complaint against it, pursuant to the Graves Amendment. In general, “[u]nder the Graves Amendment, in order for recovery to be barred, the owner, or an affiliate of the owner, must be engaged in the trade or business of

renting or leasing motor vehicles, and the owner, or its affiliate, must not be negligent.” *Cukoviq v. Iftikhar*, 169 AD3d 766, 767, 93 N.Y.S.3d 710 [2d Dept 2019].

Turning to the merits of Defendant Hub’s motion, the Court finds that Defendant Hub has not met its *prima facie* burden. In her affidavit, Ms. Gelber states that “I am the insurance manger employed by HUB TRUCK RENTAL CORP. I am a custodian of records for HUB TRUCK RENTAL CORP., and I am familiar with the facts and circumstances in this matter, based on my review of the relevant leasing records and the police report.” (See Defendant Hub’s Motion, Gelber’s Affidavit, Paragraphs 1-2). She further states that “defendant, HUB TRUCK RENTAL CORP., is in the regular business of leasing and renting motor vehicles. HUB TRUCK RENTAL CORP. leased a 2012 Freightliner truck, bearing the New York State license plate number 80327PC, and the VIN 1FVHCYBSXCHBN9970, to RAVEN TRANSPORT INC., which was then allegedly involved in a car accident on September 8, 2020, while it was being driven by the co-defendant, MANUEL LUIS BATISTA INOA.” (Id. Paragraphs 4-5).

Additionally, Defendant Hub provides the purported Lease Agreement between Defendant Hub and Defendant Raven Transport. Defendant Hub argues by Ms. Gelber’s affidavit that the certified Police Accident Report lists “Hub Truck Rental Corp” as the vehicle owner and includes the Vehicle’s license plate number identifying the Vehicle leased to Defendant Raven Transport. However, the license plate number provided in the police accident report is not the same number as provided in Ms. Gelber’s affidavit. Further, the Lease Agreement does not identify the Vehicle.

Plaintiff argues that Defendant Hub has failed to establish that the Vehicle involved in the accident is in fact the vehicle Hub is claiming to have owned and leased to Defendant Raven Transport. Plaintiff argues that there is no admissible evidence matching the vehicle referenced by Ms. Gelber to the Vehicle. The Police Report does include the vehicle’s VIN identifying the vehicle involved in the accident as being a vehicle owned by Defendant Hub. However, the number is partially illegible and the lease does not

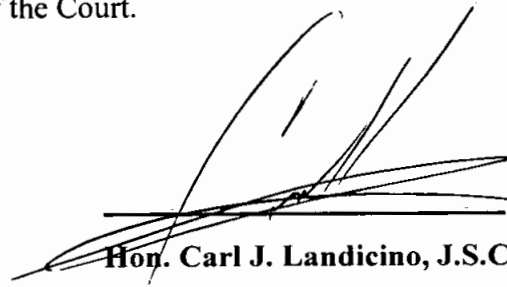
include it to identify the vehicle. *See Khan v. Duncan*, 2020 NY Misc LEXIS 18588, 2020 NY Slip Op 34618 [Sup. Ct. Queens County, May 28, 2020]. Movant provides no title document for the vehicle. Plaintiff further argues that Defendant Hub failed to provide an affidavit by a person with knowledge of the maintenance and repair history of the Vehicle. Plaintiff contends that Ms. Gelber's affidavit asserts that a search for mechanical issues, maintenance history, and repair records was unsuccessful, does not adequately establish that there is no negligent maintenance on the part of Defendant Hub. The Court finds that the movant has not met its *prima facie* burden for purposes of summary judgment and did not adequately address the maintenance issue. Additionally, Hub denies having knowledge or information to form a belief in relation to its ownership of the vehicle and its employment of Defendant Inoa in its answer. The Court finds that Defendant Hub was unable to provide evidence that the Vehicle is a vehicle owned by Defendant Hub and leased to Defendant Raven Transport. Therefore, Defendant's Hub's summary judgment motion is denied.

Based on the foregoing, it is hereby ORDERED as follows:

Defendant Hub's motion (Motion Sequence #1) for summary judgment is premature and denied without prejudice.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
**Hon. Carl J. Landicino, J.S.C.**  
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