

Feliz v Taylor

2022 NY Slip Op 34532(U)

April 3, 2023

Supreme Court, New York County

Docket Number: Index No. 154634/2022

Judge: James G. Clynes

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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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QUENTIN FELIZ,

Plaintiff,

- v -

DANYLE E. TAYLOR, TURO, INC., EDDIE NORTHINGTON,
SHAINA NORTHINGTON, ACAR LEASING LTD,
IAC/INTERACTIVE CORP.

Defendant.

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INDEX NO. 154634/2022

MOTION DATE 07/15/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for

DISMISS

Upon the foregoing documents and following oral argument, it is ordered that the motion by Defendants Turo, Inc., Eddie Northington, Shaina Northington, and IAC/Interactive Corp., i/s/h/a IAC/Interactive Corp. d/b/a Turo Car Sharing Company to dismiss Plaintiff's Complaint against them for failure to state a cause of action upon which relief may be sought is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of an April 16, 2022 motor vehicle accident between a vehicle owned by Defendant Eddie Northington and operated by Defendant Danyle E. Taylor, and Plaintiff, who was operating a stand-up scooter. Defendant Shaina Northington is named on the vehicle insurance with Defendant Eddie Northington. Defendant Acar Leasing Ltd. is not a party to this motion, however there is a dispute as to its status within the case. This matter has been discontinued as against Defendant IAC/INTERACTIVE CORP. d/b/a TURO CAR SHARING COMPANY.

On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the Court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83 [1994]). However, factual allegations that consist of bare legal conclusions,

or that are inherently incredible, are not entitled to such consideration (*Mamoon v Dot Net Inc.*, 135 AD3d 656, 656 [1st Dept 2016]).

The Graves Amendment is intended to protect the vehicle rental and leasing industry against claims for vicarious liability where the leasing or rental company's only relation to the claim was that it was the technical owner of the vehicle by barring state law vicarious liability actions against owners of motor vehicles when (1) they are engaged in the trade or business of renting or leasing motor vehicles, (2) they leased the vehicle involved in the accident, (3) the subject accident occurred during the period of the lease or rental and (4) there is no triable issue of fact as to the plaintiff's allegation of negligent maintenance contributing to the accident (49 USC 30106 [a]; *Villa-Capellan v Mendoza*, 135 AD3d 555 [1st Dept 2016]).

In support of their motion, Defendants rely primarily on the affidavits of Defendant Eddie Northington¹, Defendant Shaina Northington, and Jeff Platt, Senior Vice President of Insurance for Turo.

In his affidavit, Defendant Eddie Northington avers that he leased the subject vehicle through Acar Leasing Ltd., he does not use and has not used the vehicle for his personal use since placing the vehicle on the Turo platform in February 2021, and he has not offered the vehicle on any other platform prior to the subject accident. Attached to his affidavit, Plaintiff Eddie Northington provided, in relevant part, Exhibit 2: what appears to be a printout of the Turo account holder page, indicating the total number of trips, the upcoming inspection date, with no previous inspections listed, the last and upcoming reservations, and the listing content; Exhibit 3: what appears to be a printout of the subject vehicle's reservations from February 4, 2022 until August 5, 2022; Exhibit 4: the Turo Car Sharing Agreement between Defendant Eddie Northington and Defendant Danyle Taylor; and Exhibit 5: what appears to be Defendant Danyle Taylor's Turo driver profile. In her affidavit, Defendant Shaina Northington avers that she is not the owner of the subject vehicle, having no security or property interest in it, she did not use the vehicle for any purpose prior to April 16, 2022, she did not list the vehicle on the Turo platform, and that her only connection to the vehicle is that she is a "named insurer" on the personal automobile insurance policy for the vehicle along with her husband, Defendant Eddie Northington.

In his affidavit, Platt avers that Defendant Turo is in the business of providing an online technology platform for hosts to share their vehicles with guests, Defendant Turo does not provide

¹ The Court notes that the affidavit of Defendant E. Northington appears to be missing a page.

rental services, does not own vehicles that are available to be shared on its platform, does not maintain or repair any of the vehicles available on its platform, that Defendant Eddie Northington is the owner of the subject vehicle, Defendant Eddie Northington hosted the vehicle which was booked by and shared with guest, Defendant Danyle Taylor on the Turo platform, and that Defendant Turo is not aware of any mechanical issues with the subject vehicle that may have contributed to the accident. Attached to his affidavit, Platt provides the Turo “terms of service,” which explicitly state that each host is responsible for maintaining their vehicle

Defendants have failed to establish that Defendant Eddie Northington may be afforded protection under the Graves Amendment. Although Defendants offer the list of past reservations, they have not established that Defendant Eddie Northington was engaged in the business of renting vehicles. The fact that he did not use the subject vehicle for personal use and did not list the subject vehicle on another car sharing platform does not provide sufficient evidence to meet Defendants’ burden. Defendants have also not provided sufficient evidence regarding the maintenance and repairs of the vehicle and have therefore failed to eliminate all triable issues of fact as to negligent maintenance contributing to the subject accident.

With regard to Defendant Shaina Northington, Defendants have established that she did not own, register or maintain the subject vehicle and can therefore not be held vicariously liable for the subject accident. Defendants have also established that Defendant Turo, Inc. does not rent vehicles but provides a platform for individuals to connect, that it was not the owner of the subject vehicle, and that it did not owe Plaintiff a duty of care. Defendant Turo, Inc., does not meet the requirements for protection under the Graves Amendment, however, since it was not the owner of the vehicle, there was no duty and therefore no breach of duty to Plaintiff. Therefore there is no basis to hold Defendant Turo vicariously liable for the subject accident.

In opposition, Plaintiff offers no objection to dismissing the action against Defendant Shaina Northington. Plaintiff contends that the dismissal be specifically without prejudice to renew, should discovery reveal liability on Defendant Shaina Northington’s part, however the Court finds this contention unavailing. The mere hope that a party might be able to uncover some evidence during the discovery process is not sufficient to warrant dismissal without prejudice to renew (*Castaneda v DO&CO NY Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]).

Plaintiff opposes dismissing the action against Defendant Turo, contending that Defendant Turo, Inc. may not claim protection under the Graves Amendment, as already discussed above,

but contends that Defendant Turo may be directly negligent for the subject accident. However, Plaintiff does not provide evidence of direct negligence and therefore fails to present unresolved triable issues of fact.

Accordingly, it is

ORDERED that the motion by Defendants to dismiss Plaintiff’s complaint as against Defendant Shaina Northington is granted; and it is further

ORDERED that the motion by Defendants to dismiss Plaintiff’s complaint as against Defendant Turo, Inc. is granted; and it is further

ORDERED that the motion by Defendants to dismiss Plaintiff’s complaint as against Defendant Eddie Northington is denied; and it is further

ORDERED that the action is severed and continued against the remaining Defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with Notice of Entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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).

This constitutes the Decision and Order of the Court.

4/3/2022
DATE


JAMES G. CLYNES, J.S.C.

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"/>
				OTHER	
				REFERENCE	