

Roberts v Tummina
2022 NY Slip Op 35108(U)
May 24, 2022
Supreme Court, Bronx County
Docket Number: Index No. 811717/2021E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 31

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IESHA ROBERTS,

Plaintiff,

Index No. 811717/2021E

DECISION and ORDER

Mot. Seq. 1

-against-

DAVID A. TUMMINA and ALLSTATE DISMANTLING CORP.,
SCHEMIKA S. WILLIAMS, and HONDA LEASE TRUST,
Defendants.

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VERONICA G. HUMMEL, A.J.S.C.:

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed in NYSCEF as submitted by the parties regarding the motion by defendant HONDA LEASE TRUST (movant or defendant Honda) [Mot. Seq. 1] for an order, pursuant to CPLR 3211(a)(7) and 3212 and 49 U.S.C.A. Section 30106, dismissing the complaint and all cross-claims against defendant Honda upon the grounds that said defendant is not a proper party to the action under the Graves Amendment and on the grounds that moving defendant was not negligent and did not cause plaintiff's injuries.

Plaintiff's complaint seeks recovery of compensatory damages for alleged serious personal injuries arising out a multi-vehicle motor-vehicle collision that occurred on September 14, 2018.

Defendant Honda's motion for an order dismissing the complaint and all cross-claims against it based upon the application of the Graves Amendment to the facts as alleged in the complaint is granted. Under the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable "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 USC § 30106 [a]).

In support of the motion, defendant Honda submits the pleadings, the affidavit of Stephen Faulk, an attorney affirmation, and the Lease Agreement. Plaintiff submits an attorney affirmation in opposition.

Faulk avers that he is employed at American Honda Finance Corp as Manager of Corporate Operations Compliance. American Honda is engaged in the business of leasing. Among other things, American Honda services and administers written lease agreements, the related lease accounts, and the Certificates of Title for leased vehicles held by Honda Lease Trust (HVT).

American Honda conducted a search and determined that the motor vehicle in the accident was leased to Ariel Antoine. HVT was the assignee and lessor. HVT owns interests in and title to leased vehicles in 48 states.

According to American Honda's records, on May 12, 2018, Antoine, of 200 Sterling Boulevard, Englewood, NJ 07631, entered into a 36-month written Closed End Motor Vehicle Lease Agreement for the relevant car at Paragon Acura in Woodside, New York, an independent, authorized Honda retailer. Pursuant to that Lease, monthly payments of \$485.52 were to be paid by the lessee Antione, through the lease term. Based on this New York lease transaction, the vehicle was correctly titled to HVT, and the Lease was assigned to HVT. Antione was responsible to maintain the vehicle in good working condition and HVT was not involved in the maintenance or repair of the vehicle. Antoine and defendant Williams did not work for HVT. The copy of the Lease, which is legible, submitted with the papers confirms these facts. The listed driver on the Lease was Antione.

Of note, there are no claims of criminal wrongdoing or negligence on the part of the movant alleged in the complaint (*see Cioffi v. S.M. Foods, Inc.*, 178 AD3d 1006 [2d Dept 2019]). When the sole basis of a claim in the action against a defendant is based on Vehicle and Traffic Law section 388, and the defendant qualifies under the Graves Amendment, the action is barred (*Villa-Capellan v. Mendoza*, 135 AD3d 555 [1st Dept 2016]). Hence, movant makes a *prima facie* showing warranting the grant of the motion.

In opposition, plaintiff fails to raise an issue of material fact as to the application of the Graves Amendment bar to the claims against defendant Honda. The attorney affirmation submitted in opposition to the motion lacks evidentiary value (*see Conti v. City of Niagara Falls Water Bd.*,

82 AD3d 1633 [1st Dept 2011]) (“It is well established . . . that an affirmation submitted by an attorney who has no personal knowledge of the facts is without evidentiary value.”), and is thus insufficient to defeat the motion.

In addition, the contention that movant’s motion is premature also lacks merit. The mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion (*Downey v. Mazzioli*, 137 AD3d 498, 499 [1st Dept 2016]).

Accordingly, defendant Honda’s motion to dismiss based on the Graves Amendment is properly granted. In light of this finding, that part of defendant’s motion that seeks an order finding that movant was not negligent and did not contribute to causing the Accident is denied as moot.

The court has considered the additional contentions not specifically addressed herein. To the extent any relief requested was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of the motion by defendant HONDA LEASE TRUST (movant or defendant Honda) [Mot. Seq. 1] for an order, pursuant to CPLR 3211(a)(7) and 3212 and 49 U.S.C.A. Section 30106, dismissing the complaint and all cross-claims against defendant Honda upon the grounds that said defendant is not a proper party to the action under the Graves Amendment is granted; and it is further

ORDERED that the part of the motion by defendant Honda [Mot. Seq. 1], made pursuant to CPLR 3212, that seeks an order dismissing the complaint and cross-claims alleged against movant on the grounds that moving defendant was not negligent and did not cause plaintiff’s injuries is denied as moot; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Honda dismissing the complaint and all cross-claims against it and severing the remaining action; and it is further

ORDERED that the Clerk shall mark motion sequence 1 decided in all court records;

and it is further

ORDERED that the caption shall be hereafter amended to read as:

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IESHA ROBERTS,

Index No. 811717/2021E

Plaintiff,

-against-

DAVID A. TUMMINA, ALLSTATE DISMANTLING

CORP. and SCHEMIKA S. WILLIAMS,

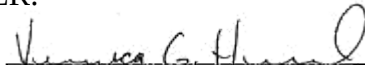
Defendants.

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The foregoing constitutes the decision and order of the court.

Dated: May 24, 2022

ENTER:

Hon. 

HON. VERONICA G. HUMMEL, A.J.S.C.

1. CHECK ONE.....

CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE

2. Motions are.....

☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE

☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

☒ AMEND CAPTION