

Yuanyi Xia v Dolaa Inc.
2023 NY Slip Op 30328(U)
January 24, 2023
Supreme Court, New York
Docket Number: Index No. 652175/2021
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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YUANYI XIA,

Plaintiff

Index No. 652175/2021

-against-

DECISION AND ORDER

DOLAA INC. d/b/a DOLAA, MING HUA LIU
a/k/a MINGHUA LIU, and SU LIU a/k/a
MICKEY LI,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff moves to dismiss defendant Dolaa Inc.'s counterclaim for negligence based on: (1) documentary evidence, (2) payment and release, (3) defendants' failure to state a viable claim, and (4) the absence of necessary parties. C.P.L.R. § 3211(a)(1), (5), (7), and (10). Upon a motion to dismiss a counterclaim, the court considers the factual allegations in Dolaa's amended verified answer as true. Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc., 37 N.Y.3d 169, 175 (2021); Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 141 (2017); Seaman v. Schulte Roth & Zabel LLP, 176 A.D.3d 538, 538 (1st Dep't 2019).

According to the amended verified answer, plaintiff entered an independent contractor agreement with Dolaa to operate its

vehicles. Plaintiff provided his services through two corporations that he owned, nonparties United Carrier Logistics Inc. and C Trip Inc. On or about April 2, 2020, plaintiff fell asleep while driving Dolaa's tractor and trailer, which caused a collision in Wyoming, resulting in \$20,500.00 in damage to the vehicle and towing expenses. Plaintiff agreed to reimburse Dolaa for its damages and allowed a \$5,249.00 deduction from his last paycheck as partial payment. The balance of \$15,251.00 remains unpaid.

II. PLAINTIFF'S MOTION TO DISMISS DEFENDANTS' COUNTERCLAIM

A. Documentary Evidence

To succeed on a motion to dismiss a counterclaim under C.P.L.R. § 3211(a)(1), the documentary evidence that forms the basis of a defense must refute Dolaa's "factual allegations, conclusively establishing a defense as a matter of law." Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc., 37 N.Y.3d at 175 (quoting Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002)). The statute does not explicitly define documentary evidence, but the documents must be unambiguous, of undisputed authority, with contents that are essentially undeniable, to establish a conclusive defense. VXI Lux Holdco S.A.R.L. v. SIC Holdings, LLC, 171 A.D.3d 189, 193 (1st Dep't 2019).

Plaintiff presents a police report, but it is inadmissible

hearsay since it is neither sworn nor certified, and no witness lays a business record foundation for its admissibility. Garcia v. BLS Limousine Serv. of New York, Inc., 199 A.D.3d 612, 612 (1st Dep't 2021); De Diaz v. Klausner, 198 A.D.3d 475, 477 (1st Dep't 2021). Plaintiff's statements in the report are also inadmissible hearsay, because they are not against his interest. Coleman v. New York City Tr. Auth., 134 A.D.3d 427, 428 (1st Dep't 2015). Even were the court to consider the report, it would not constitute documentary evidence under C.P.L.R. § 3211(a)(1), because the report does not refute the allegation that the collision is due, at least in part, to plaintiff's negligent operation of the vehicle. Shanghai Yongrun Inv. Mgt. Co., Ltd. v. Xu, 203 A.D.3d 495, 495 (1st Dep't 2022). Thus plaintiff fails to present documentary evidence that warrants dismissal of Dolaa's counterclaim. C.P.L.R. § 3211(a)(1).

B. Payment or Release

Plaintiff next moves for dismissal under C.P.L.R. § 3211(a)(5), but the amended verified answer expressly alleges that plaintiff provided only partial payment to Dolaa, with \$15,251.00 still outstanding, which contradicts plaintiff's position that he paid \$5,249.00 as full compensation for Dolaa's damages. Plaintiff presents no written agreement, moreover, establishing that this payment settled Dolaa's counterclaim pursuant to C.P.L.R. §§ 2104 and 3211(a)(1).

Finally, plaintiff maintains that Dolaa tacitly released its counterclaim, because Dolaa did not seek to recover the \$15,251.00 until after plaintiff commenced this action. As long as the parties never executed a mutual release, however, Dolaa is not precluded from pursuing its claim for negligence within the statute of limitations. C.P.L.R. § 214(4); Stolper v. Burbacki, 200 A.D.3d 480, 480 (1st Dep't 2021). Therefore the court denies plaintiff's motion to dismiss Dolaa's counterclaim based on payment or release. C.P.L.R. § 3211(a)(5).

C. Failure to State a Cause of Action

To dismiss the counterclaim pursuant to C.P.L.R. § 3211(a)(7), plaintiff bears the burden to establish that the amended verified answer "fails to state a viable cause of action." Connolly v. Long Island Power Auth., 30 N.Y.3d 719, 728 (2018). Dismissal is warranted only if the amended verified answer fails to allege facts that "fit within any cognizable legal theory." Sassi v. Mobile Life Support Servs., Inc., 37 N.Y.3d 236, 239 (2021).

Dolaa pleads an actionable negligence claim by alleging that plaintiff "had a duty to operate the vehicle in a reasonably safe manner," Aff. of John Troy Ex. 1, at 16 ¶ 7, which plaintiff "breached . . . when he caused the tractor to collide with the trailer," id. ¶ 8, and, "as a direct and proximate result of the negligent operation by Xia, the vehicle was seriously damaged,

and DOLAA was caused to incur an out-of-pocket loss in the total amount of \$20,500.00." Id. ¶ 10. Although Dolaa does not articulate the duty that plaintiff owed specifically to Dolaa, the court may infer that plaintiff, as an independent contractor for Dolaa, owed a duty to operate Dolaa's vehicles in a manner that did not damage them. Therefore the court denies plaintiffs' motion to dismiss Dolaa's counterclaim pursuant to C.P.L.R. § 3211(a)(7).

D. Failure to Join Necessary Parties

Last, plaintiff contends that defendants failed to join nonparties United Carrier Logistics and C Trip as necessary parties, C.P.L.R. §§ 1001, 3211(a)(10), but defendant may be afforded complete relief without the participation of these nonparties, as neither will be affected by a judgment in this action. First Realty, LLC v. Warminster Inv'rs Corp., 88 A.D.3d 456, 457 (1st Dep't 2011). The amended verified answer alleges that plaintiff drove for Dolaa as an independent contractor, which provides a basis for liability against plaintiff alone, regardless whether plaintiff owns United Carrier Logistics and C Trip. Although plaintiff's alleged ownership of both corporations raises an inference that Dolaa may also have conducted business with them, plaintiff fails to demonstrate their necessary inclusion in this action through either the verified complaint or the amended verified answer, absent

allegations that Dolaa actually contracted with United Carrier Logistics or C Trip directly. Therefore the court denies plaintiffs' motion to dismiss Dolaa's counterclaim based on its failure to join United Carrier Logistics and C Trip as necessary parties. C.P.L.R. §§ 1001, 3211(a)(10).

V. CONCLUSION

For the reasons explained above, the court denies plaintiff's motion to dismiss defendant Dolaa Inc.'s counterclaim. C.P.L.R. § 3211(a)(1), (5), (7), and (10). Plaintiff shall file his reply within 10 days after entry of this order. C.P.L.R. § 3211(f). The parties shall appear for a Preliminary Conference via video February 28, 2023, at 12:00 noon.

DATED: January 24, 2023

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C