

Harrison v Walker

2023 NY Slip Op 31562(U)

May 2, 2023

Supreme Court, Kings County

Docket Number: Index No. 531001/2021

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 531001/2021
Motion Date: April 3, 2023
Mot. Seq. No.: 1, 2

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GERALD HARRISON,

Plaintiff,

-against-

DECISION/ORDER

MICHAEL OMAR WALKER, HUBBELL
INCORPORATED, HUBBELL INCORPORATED
(DELAWARE), HUBBELL INC., UNION LEASING
TRUST and UNION LEASING INC.,

Defendants.

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KINGS COUNTY CLERK
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The following papers, which are e-filed with NYCEF as items 22-46, were read on this motion and cross-motion:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, in motion sequence # 1, defendants, MICHAEL OMAR WALKER, HUBBELL INCORPORATED, HUBBELL INCORPORATED (DELAWARE), UNION LEASING TRUST and UNION LEASING INC., for an Order granting summary judgment in favor of defendants UNION TRUST and UNION LEASING INC. pursuant to 49 USCA §30106 and dismissing the Complaint and all claims and cross claims against defendants UNION LEASING TRUST and UNION LEASING INC; and b) any further relief which this Court deems just and proper. In motion sequence # 2, the plaintiff moves for an order (1) disqualifying defense counsel from the joint representation of defendants MICHAEL OMAR WALKER, HUBBELL INCORPORATED, HUBBELL INCORPORATED (DELAWARE), UNION LEASING TRUST and UNION LEASING INC., on the grounds that a conflict of interest exists pursuant to Rule 1.7 of the Rules of Professional Conduct (22 N.Y.C.R.R. 1200); (2) denying Defendants' MICHAEL OMAR WALKER, HUBBELL INCORPORATED, HUBBELL INCORPORATED (DELAWARE), UNION LEASING TRUST and UNION LEASING INC.'s motion pursuant to CPLR §3221(a) for dismissal of all claims against defendants UNION LEASING TRUST and UNION LEASING INC.; and/or pursuant to CPLR §3212 granting summary judgment on behalf

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of UNION LEASING TRUST and UNION LEASING INC.; (3) pursuant to CPLR 3212(e) granting plaintiff summary judgment on the issue of liability against the defendants herein, MICHAEL OMAR WALKER, HUBBELL INCORPORATED, HUBBELL INCORPORATED (DELAWARE), UNION LEASING TRUST and UNION LEASING INC.; (4) pursuant to CPLR §3211(b), Striking the Affirmative Defenses of comparative negligence, assumption of risk, culpable conduct, and failure to wear a seatbelt; (5) pursuant to CPLR 3025(b) granting Plaintiff permission to supplement the summons and to amend complaint and, upon the grant of leave to amend, permitting plaintiff to file and serve same; (6) directing the Clerk of the Court to amend the caption of the within matter to reflect said amendment; and (7) for such other, further, and different relief this Honorable Court deems just and proper under the circumstances.

That branch of defendants' motion for an Order granting summary judgment dismissing the Complaint and all claims and cross claims against defendants UNION LEASING TRUST and UNION LEASING INC. pursuant to 49 USCA §30106 ("The Graves Amendment") is DENIED, without prejudice, as moot, since the defendants have withdrawn this branch of the motion.

In light of defendants' withdrawal of that branch of their motion for summary judgment dismissing the Complaint and all claims and cross claims against defendants UNION LEASING TRUST and UNION LEASING INC. pursuant to "The Graves Amendment", plaintiff's cross-motion for an order denying defendants' motion under the Graves Amendment and for an order disqualifying defendants' counsel from representing all of the defendants in this action on the grounds that there is a conflict of interest is DENIED as moot. The plaintiff may renew the motion to disqualify if the defendants again move for summary judgment dismissing the action insofar as asserted against defendants UNION LEASING TRUST and UNION LEASING INC. on the ground that the action is barred under the Graves Amendment.

That branch of the cross-motion pursuant to CPLR 3212(e) in which the plaintiff seeks partial summary judgment on the issue of liability against the defendants MICHAEL OMAR

WALKER, HUBBELL INCORPORATED, HUBBELL INCORPORATED (DELAWARE), UNION LEASING TRUST and UNION LEASING INC. is denied. The affidavit of MICHAEL OMAR WALKER, submitted in opposition to the motion, raises triable issues of fact as to whether the plaintiff's own negligence in driving at an excessive rate of speed was the sole proximate cause of the accident. The plaintiff may renew this branch of the cross-motion if a deposition of MICHAEL OMAR WALKER reflects that his testimony regarding the happening of the accident was feigned.

That branch of the cross-motion pursuant to pursuant to CPLR §3211(b) for an order striking defendants' affirmative defenses of comparative negligence, assumption of risk, and culpable conduct is also DENIED. The plaintiff may also renew this branch of the cross-motion if a deposition of MICHAEL OMAR WALKER reflects that his testimony regarding the happening of the accident was feigned.

That branch of the cross-motion pursuant to pursuant to CPLR §3211(b) for an order striking defendants' affirmative defense that the plaintiff's failure to wear a seatbelt was a cause of the accident is GRANTED. The plaintiff, through the submission of his deposition testimony, established as a matter of law that he was wearing a seat belt at the time of the accident. The defendants failed to raise a triable issue of fact. Defendant did not make any plausible argument that further discovery is needed to contest this branch of plaintiff's motion.

That branch of the cross-motion pursuant to CPLR 3025(b) for an order granting Plaintiff leave to file and serve a supplemental summons and amended complaint in the form on file with NYSCE as document number 37 is GRANTED without opposition. The proposed supplemental summons and amended complaint is deemed filed and served nunc pro tunc on the defendants that have appeared in the action. These defendants are directed to serve an answer to the amended complaint within 30 days of service of this order with notice of entry. The plaintiff is directed to serve the newly added defendant(s) and to file proof of such service within 60 days of service of this order with notice of entry.

That branch of the cross-motion for an order amending the caption of the within matter to reflect said amendment is granted and the caption shall now read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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GERALD HARRISON,

Plaintiff,

-against-

MICHAEL OMAR WALKER, HUBBELL INCORPORATED,
HUBBELL INCORPORATED (DELAWARE), SMART GRID
SOLUTIONS LLC, UNION LEASING TRUST and UNION
LEASING INC.,

Defendants.

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Accordingly, it is hereby

ORDRED that motion and cross-motion are decided as indicated above.

This constitutes the decision and order of the Court.

Dated: May 2, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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