

Jones v Grant
2023 NY Slip Op 33979(U)
November 6, 2023
Supreme Court, New York County
Docket Number: Index No. 158940/2019
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

-----X ALICIA JONES, MAYA WIGGINS, Plaintiff, - v - REGINALD GRANT, RYDER TRUCK RENTAL, INC., RYDER SYSTEM, INC., ACE JANITORIAL SUPPLY CO. INC., ELVIS GONZALEZ, THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY Defendant. -----X	INDEX NO. <u>158940/2019</u> MOTION DATE <u>02/19/2020, 11/18/2022, 12/07/2022</u> MOTION SEQ. NO. <u>003 005 006</u>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 58, 59, 60, 61

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 106, 108, 116, 117, 118, 119, 120, 121, 122

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111, 112, 113, 114, 115, 123

were read on this motion to/for JUDGMENT - SUMMARY.

The instant personal injury action arises out of a motor vehicle accident which occurred on January 2, 2019 at or near Grand Street in New York, New York.¹ Defendants Ryder Truck Rental, Inc. and Ryder System, Inc. (together, "Ryder") move pursuant to CPLR 3211(a)(7) for dismissal for failure to state a cause of action (Motion Sequence Number 3). Defendant Elvis Gonzalez also moves pursuant to CPLR 3212 for summary judgment and dismissal on the grounds that the plaintiffs have failed to establish liability (Motion Sequence Number 5). Finally, the plaintiffs also

¹ By orders dated April 21, 2020, and April 27, 2023, the action was dismissed against defendants City of New York, and New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority, respectively.

move for leave to renew a motion seeking summary judgement (Motion Sequence Number 6). Opposition is submitted for all three motions.

BACKGROUND

On January 2, 2019, mother and daughter plaintiffs Alicia Jones and Maya Wiggins were rear passengers of a vehicle owned and operated by defendant Elvis Gonzalez (Gambone Affirmation [Dkt. 88] ¶ 3). The vehicle, a 2016 Honda Pilot with livery plate T728252C, was being used as a medical transportation vehicle through company Brooklyn Radio to take the plaintiffs home from a medical appointment (Gambone Aff. Ex. H [Jones Deposition Transcript] [Dkt. 102] 17:18-25, 18:1-5, DiBari Aff. Ex. H [Gonzalez Affidavit] [Dkt. 86] p. 1). Gonzalez was driving westbound on Grand Street in Manhattan, New York at approximately 2:00 p.m., when the Honda was struck in the rear by a 2018 freightliner truck owned by the Ryder defendants (Gonzalez Aff., p. 1; Nolen Aff. Ex. 1 [Grant Affidavit] [Dkt 111] ¶ 1).

The truck was driven by defendant Reginald Grant in connection with his employment with defendant Ace Janitorial Supply Co. (Gambone Aff. Ex. C [Verified Complaint] [Dkt. 97] ¶ 150). Gonzalez was allegedly stopped at a red light behind other vehicles at the intersection of Grand Street and Clinton Street when his Honda was struck in the rear by the truck driven by Grant (Gonzalez Aff., p. 1). Gonzalez claims the impact of the freightliner truck pushed his Honda into the vehicle ahead of him, a 2017 Jeep operated by nonparty Alisha Batts (*id.*). Grant, however, alleges that as he approached the traffic light at Clinton Street, the Jeep stopped short at the light, which caused Gonzalez to hit the Jeep's rear (Grant Aff., ¶¶ 3-5). Grant further alleges that he was traveling less than five miles an hour and immediately applied the brakes, but could not avoid hitting Gonzalez's Honda (*id.* ¶¶ 6-7).

DISCUSSION

The Ryder Defendants' Motion to Dismiss Pursuant to CPLR 3211(a)(7) (Motion Sequence Number 3)

The complaint must be dismissed as against the Ryder defendants pursuant to the Graves Amendment, 49 USC 30106. That statute 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 plaintiffs allegation of negligent maintenance contributing to the accident (49 USC 30106 [a]; *Villa-Capellan v Mendoza*, 135 AD3d 555 [1st Dept 2016]).

In the instant action, Ryder has sufficiently met its burden through its submission, *inter alia*, of an attorney affirmation, Grant's affidavit, and title to the truck. It is undisputed that Ryder is in the business of leasing vehicles, that it leased the truck to Ace Janitorial Supply Co. and the accident occurred during the rental period. While plaintiffs argue that dismissal is premature because Grant, who has not been deposed, failed to expressly disclaim mechanical issues as the cause of the accident, he sufficiently eliminated that possibility by instead blaming Gonzalez's Honda for stopping short ahead of him. More to the point, Ryder has established that the truck was in good working condition at the time of the accident by the submission of its maintenance records just two months before (*Reifsnyder v Penske Truck Leasing Corp.*, 140 AD3d 572, 573 [1st Dept 2016]). Therefore, Ryder's motion to dismiss the action is granted and the complaint, and any and all cross-claims, are dismissed against Ryder only.

Defendant Gonzalez's Motion for Summary Judgment to Dismiss the Complaint Pursuant to CPLR 3212 (Motion Sequence Number 5) and Plaintiffs' Motion to Renew Their Motion for Summary Judgment Pursuant to CPLR 2221(e)(2) (Motion Sequence Number 6)

A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a *prima facie* case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident (*Passos v MTA Bus Co.*, 129 AD3d 481 [1st Dept 2015]; *Beloff v Gerges*, 80 AD3d 460 [1st Dept 2011]). In support of his motion, Gonzalez submits, *inter alia*, his affidavit, a police report of the accident, and an MV-104 report. In his affidavit, he states that on the date of the accident, he was traveling west on Grand Street with two female passengers in the backseat and stopped at a red light as he approached the intersection of Grand and Clinton Street. He further states that as he was waiting for the green light, he felt a medium impact to the rear of his bumper, which pushed his Honda into the Jeep ahead of him. The police report and MV-104 report indicate that the accident was a rear-end collision in which the truck operated by Grant hit Gonzalez's Honda. Therefore, the burden shifts to the non-moving parties to establish an issue of fact by providing a non-negligent explanation for the rear-end collision (*see Urena v GVC Ltd*, 160 AD3d 467 [1st Dept 2018];

Morgan v Browner, 138 AD3d 560 [1st Dept 2016]; *Corrigan v Porter Cab Corp*, 101 AD3d 471, 472 [1st Dept 2012]).

In opposition, Grant submits, *inter alia*, an affirmation of counsel and purported affidavit in which Grant alleges that Gonzalez's Honda first struck the rear of nonparty Batts' Jeep after the Jeep stopped short at a traffic light. He alleges that he applied the brakes but could not avoid hitting Gonzalez's Honda. However, Grant has failed to meet his burden as his purported affidavit was not signed and not notarized as required by CPLR 2309. Further, as counsel claims no personal knowledge, his affirmation "is without evidentiary value and thus unavailing" *Zuckerman v City of New York*, 49 NY2d 557, 563 [1980] (internal citations omitted). Therefore, Gonzalez's motion for summary judgment dismissing the complaint must be granted.

Similarly, the plaintiffs move for leave to renew their motion for summary judgment against Grant, Ryder, and Ace Janitorial Supply Co. The plaintiffs previously moved for summary judgment, but by an order dated April 17, 2023, the motion was denied as the plaintiffs failed to establish entitlement to relief and the motion was premature pursuant to CPLR 3212(f). [Dkt. 124]. The plaintiffs assert that the motion is no longer premature because both plaintiffs were deposed. In support of their motion, the plaintiffs submit, *inter alia*, Jones' deposition testimony, Wiggins deposition testimony, and the police report. In her deposition testimony, Jones states that Gonzalez's Honda came to a gradual stop at a red light, was stopped for 30 to 45 seconds, and was about a half a car length's distance behind the vehicle in front of it before the accident (Jones Dep. Tr. at 30:14-16, 31:10-14, 24, 32:1-2, 14-20). She stated that the impact from behind pushed Gonzalez's Honda straight forward ahead into another stopped car (*id.*, 35:8-23). She states that the light was still red at the moment she felt the impact from behind (*id.*, 35:24-25, 36:1-2). Likewise, Wiggins also states that Gonzalez's Honda was completely stopped for 45 seconds before the accident occurred and there was a car ahead of them (Gambone Aff. Ex. I [Wiggins Deposition Transcript] [Dkt. 103] at 39:19-20, 45:4-17). She further stated that there was enough space between Gonzalez's Honda and the car ahead of his for a group of people to walk in between both cars (*id.*, 47:19-21). In addition, she said that the impact of Grant's truck on the rear of Gonzalez's Honda pushed it forward (*id.*, 63:6-11). Based on the foregoing, the plaintiffs have made out a prima facie case of negligence and the burden shifts to defendants to raise a triable issue of fact (*see Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985)).

In opposition, Grant again submits, *inter alia*, an affirmation of counsel who claims no personal knowledge and a purported affidavit not signed and not notarized as required by CPLR 2309 (*Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]). Therefore, summary judgment on the issue of liability must be granted in favor the plaintiffs as against Grant and Ace Janitorial Supply, Co.

Accordingly, it is hereby

ORDERED that the motion of defendants Ryder Truck Rental, Inc. and Ryder Systems, Inc. (Motion Sequence Number 3) to dismiss the complaint and all cross-claims against them herein is granted in its entirety, and the complaint and any and all cross-claims are dismissed as against defendants Ryder Truck Rental, Inc. and Ryder Systems, Inc. said defendants and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the motion of defendant Elvis Gonzalez for summary judgment (Motion Sequence Number 5) to dismiss the complaint and all cross-claims against him herein is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

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

ORDERED that the caption be amended to reflect the dismissal of the Complaint against defendants Ryder Truck Rental, Inc. and Ryder Systems, Inc. and against defendant Eric Gonzalez and that all future papers filed with the court bear the amended caption; and it is further

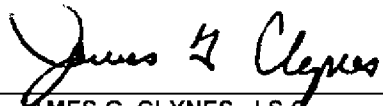
ORDERED that the motion of plaintiffs Jones and Wiggins for leave to renew their motion for summary judgment as to liability (Motion Sequence Number 6) is hereby granted as against defendants Grant and Ace Janitorial Supply, Co. only and summary judgment on the issue of liability only is granted in favor of plaintiffs Jones and Wiggins and against defendants Grant and Ace Janitorial Supply, Co.; and it is further

ORDERED that counsel for the moving parties 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 changes 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.

<u>11/6/2023</u>			
DATE		JAMES G. CLYNES, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☒ NON-FINAL DISPOSITION
	☒	GRANTED	☐ GRANTED IN PART
		☐ DENIED	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT
			☐ REFERENCE