

Cotto v Robinson

2023 NY Slip Op 34464(U)

December 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 517690/2017

Judge: Robin K. Sheares

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ALFREDO COTTO,

Index No.: 517690/2017

Plaintiff,

-against-

DECISION/ORDER

DWAYNE W. ROBINSON, EAN HOLDINGS, LLC,
ELRAC, LLC, and SECURITAS ELECTRONIC
SECURITY, INC.,

*Motion Sequence
Nos. 08 and 09*

Defendants.

Honorable:
Robin K. Sheares

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the Motion(s) found at Motion Sequence #8 and Motion Sequence #9:

Papers For Motion Sequence #8

Numbered

Notice of Motion and Affidavits Annexed.....	<u>222, 223, 224</u>
Answering Affidavits.....	<u>246, 247, 248</u>
Replying Affidavits.....	<u>N/A</u>
Exhibits.....	<u>225</u>
Other.....	<u>Oral Argument held on 10/5/23</u>

Papers For Motion Sequence #9

Numbered

Notice of Motion and Affidavits Annexed.....	<u>227, 228, 229</u>
Answering Affidavits.....	<u>236</u>
Replying Affidavits.....	<u>249</u>
Exhibits.....	<u>230, 231, 232, 233, 237, 238, 239, 240, 241 242, 243, 244, 250</u>
Other.....	<u>Oral Argument held on 10/5/23</u>

As for Motion Sequence #8:

Upon the foregoing cited papers and the oral argument held on October 5, 2023, the Decision/Order on the Motion for Summary Judgment i) in favor of Defendants EAN Holdings, LLC

and Elrac, LLC based upon the application of 49 U.S.C. §30106, ii) in favor of Defendants EAN Holdings, LLC and Elrac, LLC on the basis that they do not bear any liability for the subject accident, and iii) pursuant to Part 130 § 130-1.1 of the Rules of the Chief Administrative Judge for the cost and reimbursement for the reasonable expenses incurred to make the motion:

1. Defendants' Motion seeking an Order in favor of Defendants EAN Holdings, LLC and Elrac, LLC which seeks to dismiss the claims asserted against them in Plaintiff's Amended Complaint pursuant to 49 U.S.C. §30106 ("Graves Amendment") is granted. Defendants established the applicability of the Federal Statute 49 U.S.C. §30106, which bars vicarious liability against companies which rent vehicles to the general public. As such, this portion of the motion is granted in full.

2. Defendants' Motion seeking an Order in favor of Defendants EAN Holdings, LLC and Elrac, LLC on the basis that they do not bear any liability for the subject accident as alleged against them in Plaintiff's Amended Complaint is granted. Defendants established that neither EAN Holdings, LLC nor Elrac, LLC bear any liability for the occurrence of the subject accident. There are no negligent maintenance or negligent entrustment issues that would bear upon these Defendants that are a cause of the subject accident. As such, this portion of the motion is granted in full.

3. Plaintiff had included claims against Defendants EAN Holdings, LLC and Elrac, LLC in the Amended Complaint filed on January 23, 2023. Defendants EAN Holdings, LLC and Elrac, LLC's application for the requested relief had previously been granted through a Decision and Order filed with the Court on October 21, 2022, for Motion Sequence #6.

4. To the extent not ruled upon, any other portion of the motion is denied.

As for Motion Sequence #9:

Upon the foregoing cited papers and the oral argument held on October 5, 2023, the Decision/Order on the Motion by Defendant Securitas Electronic Security, Inc. for an order pursuant to

CPLR § 3211(a)(5) dismissing Plaintiff's Amended Complaint and all cross-claims against the Defendant Securitas Electronic Security, Inc. as the Amended Complaint against that Defendant is barred by the applicable statute of limitations, and granting such other and further relief as this Court may deem just and proper:

1. Defendant Securitas Electronic Security, Inc.'s motion for an order pursuant to CPLR § 3211(a)(5) dismissing Plaintiff's Amended Complaint and all cross-claims against the Defendant Securitas Electronic Security, Inc. as the Amended Complaint against that Defendant is barred by the applicable statute of limitations, is granted. Plaintiff alleged that he was injured in an accident on April 14, 2017, and did not commence an action against Securitas Electronic Security, Inc., a new party to the lawsuit, until January 23, 2023. Pursuant to CPLR § 3211 (a)(5) and Executive Order 202.8 and subsequent related Executive Orders through Executive Order 202.67, Plaintiff was required to commence suit within 3 years plus 228 days (the Executive Orders toll period) of the date of the accident – in this case, by Monday, November 30, 2020. At no time in this lawsuit did Plaintiff name a John Doe or XYZ Corporation defendant as a placeholder for a potential defendant-employer of defendant Robinson. CPLR § 1024. Plaintiff also made no showing of the required due diligence to timely ascertain the identity of defendant Robinson's employer in order to relate back the Amended Complaint against Securitas Electronic Security, Inc. "[A] plaintiff cannot rely on CPLR 1024 unless he or she "exercise[s] due diligence, prior to the running of the statute of limitations, to identify the defendant by name and, despite such efforts, [is] unable to do so," and "[a]ny failure to exercise due diligence to ascertain the 'Jane Doe's' name subjects the complaint to dismissal as to that party" (Bumpus v New York City Tr. Auth., 66 AD3d at 29-30)." Moran v County of Suffolk, 189 AD3d 1219, 1220-1221 (2d Dept 2020).

Moving Defendants are ordered to serve the other parties a copy of this decision and order, with Notice of Entry upon all of the named parties within (30) days of this order.

This constitutes the Decision/Order of the Court.

Dated: December 14, 2023

ENTER:



Hon. Robin K. Sheares, J.S.C.

For clerks use only

Motion/Seq. # 08

MG

MD

Motion/Seq. # 09

MG

MD