Romero v EAN Holdings, LLC
2023 NY Slip Op 35075(U)
August 22, 2023
Supreme Court, Bronx County
Docket Number: Index No. 20989/2020E
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 20

ANGIE NOELIA ROMERO as Proposed Administrator[1] of the Estate of NOELIA MATEO,

Plaintiff,

-against-

EAN HOLDINGS, LLC and VICTOR MATEO,

Defendants.

Index No. 20989/2020E

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

DECISION & ORDER

Mot. Seq. No. 1

In accordance with CPLR § 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in connection with defendant EAN HOLDINGS, LLC's ("EAN Holdings") motion (Seq. No. 1) seeking an order, pursuant to CPLR §§ 3211(a)(7) and 3212, granting summary judgment to EAN Holdings dismissing the Complaint on the ground that it is barred by 49 U.S.C. § 30106 (commonly known as the Graves Amendment), and, pursuant to CPLR §§ 3001, 3017, and 3212, granting a declaration, based on EAN Holdings' fifth affirmative defense, that EAN Holdings and its affiliates are not obligated to defend, indemnify, or extend financial responsibility on behalf of co-defendant VICTOR MATEO ("Mateo") in this or any related action.

This is an action to recover damages for severe personal injuries to and death of Plaintiff's decedent, NOELIA MATEO ("Decedent"). Decedent's injuries and ultimate death resulted from events that occurred on October 3, 2019, at approximately 7:00 a.m., outside of the residence located at 530 Ellsworth Avenue, on the same street as Decedent's own residence. Plaintiff seeks

[1] A "proposed" administrator generally does not have the capacity to sue on the estate's behalf under Estates Powers and Trusts Law § 11-3.2(b) and must obtain letters of administration from the Surrogate's Court. Defendants, however, bore the burden to raise this issue in their answers or in a pre-answer motion to dismiss. As defendants have done neither, the issue is waived. *See* CPLR § 3211(e); *City of N.Y. v. State of N.Y.*, 86 N.Y.2d 286, 292 (1995); *Bank of N.Y. v. Cepeda*, 120 A.D.3d 451 (2d Dep't 2014).

damages from Mateo for voluntary assault and/or negligence and recklessness in his operation of a Hyundai vehicle and other violent actions. Plaintiff also seeks damages from EAN Holdings as owners of the Hyundai vehicle, claiming vicarious liability, negligent hiring and supervision, and/or negligent entrustment.

In support of its motion, EAN Holdings submits an attorney affirmation; a statement of material facts; an affidavit from Kevin Howard, risk manager of ELRAC, LLC ("ELRAC"); Mateo's criminal court indictments and appearance record; Decedent's death certificate; a certified transcript of Mateo's guilty plea in the matter of *People v. Victor Mateo*, Index No. 2038/2019; an uncertified police accident report; Mateo's Enterprise rental agreement; EAN Holdings' certificate of title; and vehicle maintenance and service records. The motion also cites to the pleadings previously e-filed by the parties on NYSCEF.

In opposition to the motion, Plaintiff submits an attorney affirmation, counterstatement of material facts, and caselaw related to illegible exhibits.

In reply, EAN Holdings submits additional caselaw relevant to the Graves Amendment.

Mateo does not submit opposition to the motion.

I. EVIDENTIARY ISSUES

As an initial matter, Plaintiff's opposition does not attempt to set forth evidence of triable issues of fact, but instead opposes the motion solely on the basis of EAN Holdings' evidentiary support. In the interests of clarity of the legal analysis herein, the court will first address the evidentiary issues raised concerning the submitted evidence.

Plaintiff argues that EAN Holdings has not submitted admissible evidence to make a *prima facie* case for the relief sought. Specifically, Plaintiff objects to EAN Holdings' reliance on the uncertified police accident report; the criminal court website printout; the rental agreement, which is partially illegible, under CPLR § 2101; and the vehicle title/registration and maintenance records, both which Plaintiff argues were used without laying a proper foundation as business records pursuant CPLR § 4518.

A. Uncertified Police Report

It is well settled that a court cannot consider an uncertified police accident report as competent evidence in deciding a plaintiff's motion for summary judgment. *Yassin v. Blackman*,

188 A.D.3d 62, 65-66 (2d Dep't 2020); *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009). Because the police accident report here is uncertified, the Court may not rely on it in deciding the motion.

In any event, EAN Holdings relies on the uncertified police accident report only to clarify the timeline of Mateo separately striking Decedent with a rental vehicle before hitting her with her own vehicle, and these facts are not in dispute.

B. Criminal Case Details

Plaintiff argues that no proper foundation was laid for an "unauthenticated printout" of the case details summary for Bronx County Supreme Court, Criminal Term Index No. 2038/2019, from the state's criminal court website. The document contains Mateo's name, the date of the incident and arrest, the list of his arrest charges and indictments, and the dates of his arraignment and other court appearances. (NYSCEF Doc. 24) According to the document, it was accessed on June 29, 2020, and saved from the "WebCriminal" portal of the New York State Unified Court System website, which provides details on active cases and future court appearances. While Mateo's case is no longer publicly available on the search portal due to its inactive status, the printout is time-stamped and bears the formatting and verifiable information generated by the court system's internal databases.

This record of the criminal court proceedings from the state's own website is "so patently trustworthy as to be self-authenticating," and the Court takes judicial notice of such providing a foundation for its admission. *See Elkaim v. Elkaim*, 176 A.D.2d 116, 117 (1st Dep't 1991) (citing *People v. Kennedy*, 68 N.Y.2d 569, 577 n. 4 (1986)); *see also People v. Suarez*, 51 Misc.3d 620, 627 (N.Y. Crim. Ct. N.Y. Cty. 2016) (holding that a criminal defendant's rap sheet based on information generated by Division of Criminal Justice Services is self-authenticating); *Morales v. City of N.Y.*, Index No. 3971/12, 2013 WL 8360333, at *1 (N.Y. Sup. Ct. N.Y. Cty. 2013) (holding that a printout of building classifications from the City's website is self-authenticating).

C. Rental Agreement Terms and Conditions

Plaintiff also challenges the rental agreement submitted by EAN Holdings as inadmissible due to its illegibility. According EAN Holdings' counsel, the last two pages of the document are the agreement's standard terms and conditions, including termination of the right to use the vehicle for illegal and prohibited acts. (*See* NYSCEF Doc. 21, ¶ 9) The text of those two pages in the scan of the agreement, however, is shrunk to an unreadably small size. Upon magnification, the text

remains illegible. Under CPLR § 2101, "the writing shall be legible" in all submitted papers, and the Court cannot rely on EAN Holdings' representations as to what is contained in the illegible portions of the rental contract.

That said, if a submission is *partially* illegible, "only those entries or notations within the record that are illegible should be deemed inadmissible," not the entire document. *Fortunato v. Murray*, 101 A.D.3d 872, 874 (2d Dep't 2012); *Franco v. Tri-State Consumer Ins. Co.*, Index No. 510393/2017, 2018 WL 5823647, at *3 (N.Y. Sup. Ct. Kings Cty. 2018). This rule has been invoked for illegible notations on medical and business records, and it is applicable here to the rental agreement. Thus, the Court may rely on the relevant legible parts of the rental agreement (*i.e.*, the renter's signature, the subject vehicle and dates, and the bold text insurance information on the first three pages) as admissible evidence, while disregarding the additional illegible terms-and-conditions pages.

D. Business Records

Lastly, Plaintiff argues that EAN Holdings failed to lay a proper business-records foundation under CPLR § 4518 for the vehicle's certificate of title and registration and its maintenance records and invoices.

i. *Title and Registration*

EAN Holdings argues that the vehicle title, which is certified by a public officer, needs no CPLR § 4518 foundation to be admissible. *See* CPLR § 4520; Vehicle & Traffic Law ("VTL") § 2108. Our courts have not thoroughly examined the issue of whether a vehicle's certificate of title meets all six requirements of the "public officer" hearsay exception (CPLR § 4520) or the broader CPLR § 4518(c) exception, and, for the reasons discussed below, it is not a distinction that warrants analysis here.

It is well established that a certificate of title issued by the New York State Department of Motor Vehicles in accordance with VTL § 2108 constitutes "*prima facie* evidence of the facts appearing on it" and creates a presumption of ownership, subject to rebuttal from the opposing party. *People v. Whitehead*, 48 A.D.3d 237, 238 (1st Dep't 2008); *Dorizas v. Island Insulation Corp.*, 254 A.D.2d 246, 247 (2d Dep't 1998). The vehicle's registration also constitutes *prima facie* evidence of ownership. *See Shuba v. Greendonner*, 271 N.Y. 189, 193 (1936).

Ownership of the subject vehicle is precisely what EAN Holdings attempts to establish by submission of the certificate of title and registration. In any event, the fact that EAN Holdings was the owner of the vehicle at the time of the incident has never been contested by the other parties in this action. Indeed, that fact is the *very basis* of Plaintiff's claims against EAN Holdings here. Thus, the admissibility of the title and registration is irrelevant, because the facts that they would be used to establish are already undisputed.

ii. *Maintenance Records*

A party offering business records under the hearsay exception of CPLR § 4518 must lay a proper foundation by verifying that the records were made routinely, as part of the regular course of business, and at the time the event occurred or within a reasonable time thereafter. This foundation must be provided by someone with personal knowledge of the maker's business practices and procedures, including recordkeeping practices. *See Kennedy*, 68 N.Y.2d 569; *JPMorgan Chase Bank, N.A. v. Clancy*, 117 A.D.3d 472 (1st Dep't 2014). This may be accomplished with an affidavit wherein the affiant with personal knowledge states "in words or substance" that the records were made in the regular course of business. *JPMorgan*, 117 A.D.3d at 472.

As a foundation for the rental vehicle's maintenance records, EAN Holdings submits an affidavit from Mr. Howard, a risk manager of ELRAC. Among other sworn statements, Mr. Howard states that he is "fully familiar with [ELRAC's] business activities and the business activities of its affiliated companies, inclusive of the named defendant, EAN Holdings, LLC." (NYSCEF Doc. 22, ¶ 1) He then identifies the submitted documents as a "complete copy of the maintenance records" for the rental vehicle, including "routine preventative maintenance consisting of oil changes and tire rotations."(*Id.* ¶ 5) He goes on to affirm that the company's records reveal no other mechanical repairs or complaints regarding the vehicle prior to the October 3, 2019 incident. (*Id.*)

Mr. Howard's affirmation is wholly insufficient to lay a foundation for admission of the maintenance records as business records or to permit the Court to infer from the absence of any additional records that no additional maintenance on the rental vehicle was performed. Nowhere in his affidavit does Mr. Howard attempt to satisfy the requirements of CPLR § 4518. As the Court of Appeals has observed,

> [t]he essence of the business records exception to the hearsay rule is that records systematically made for the conduct of a business as a business are inherently

> highly trustworthy because they are routine reflections of day-to-day operations and because the entrant's obligation is to have them truthful and accurate for purposes of the conduct of the enterprise.

Kennedy, 68 N.Y.2d at 579 (citation omitted). Without the proper foundation, the maintenance records in question do not have the level of trustworthiness that would permit their admission under CPLR § 4518.[2]

None of the cases on which EAN Holdings relies alters the Court's conclusion. In its reply, EAN Holdings submits a copy of *Armstrong v. Honeyghan*, Index No. 33940/2019E, 2021 WL 834295 (N.Y. Sup. Ct. Bronx Cty. Jan. 12, 2021). There, the movant relied on a similar affidavit from another ELRAC risk manager, Amy Aquino. Additionally, in its reply, EAN Holdings cites numerous unpublished decisions from the Bronx County Supreme Court, in which EAN Holdings and its affiliates brought successful Graves Amendment motions using similar employee affidavits. In all of these cases, the affiants do not expressly refer to maintenance records as having been kept in the regular course of business. Nevertheless, the courts relied on the submitted maintenance records.

The difference between this case and those cases on which EAN Holdings relies is that, here, Plaintiff specifically challenges the adequacy of business-records foundation that EAN Holdings has offered for the maintenance records. In *Armstrong*, by contrast, EAN Holdings' cross-motion was unopposed, so there was no opposition raising potential defects in the proffered business-records foundation. 2021 WL 834295, at *2. Similarly, in *Crespo v. Smith*, 24607/2020E, Mot Seq. 2, no opposition was filed. And, in the remaining cases, no challenge appears to have been made to the maintenance records' admissibility. *See Reifsnyder v. Penske Truck Leasing Corp,* 140 A.D.3d 572, 573 (1st Dept 2016); *Villa-Capellan v. Mendoza*, 135 A.D.3d 555 (1st Dept 2016); *Ward v. Williams*, 23937/2016E, Mot. Seq. 3; *Markus v. Perenze*, 30837/2017E, Mot. Seq. 3. This is significant because, in failing to object to the admissibility of the documents, the nonmovants in these other cases effectively waived that objection. *See Bank of N.Y. Mellon v.*

[2] In reply, EAN Holdings muses, "For what other conceivable purpose would a rental car company such as defendant generate and maintain maintenance records of its vehicles if not for business purposes?" This evinces a misunderstanding of the "essence" of the business-records exception to hearsay. While there likely would be no dispute that the maintenance records were created for business purposes, the *process* by which they were created is what truly matters in invoking CPLR § 4518. See *Kennedy*, 68 N.Y.2d at 579 ("The element of unusual reliability is supplied by systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them, or by a duty to make an accurate record as part of a continuing job or occupation." (citation omitted)).

EAN Holdings also cites *Elkaim*, 176 A.D.2d 116, but that case concern self-authenticating documents. The Court is not convinced that, under the circumstances in question here, vehicle maintenance records created by a private company qualify as self-authenticating documents.

Gordon, 171 A.D.3d 197, 202 (2d Dep't 2019) ("[A]s a general matter, a court should not examine the admissibility of evidence submitted in support of a motion for summary judgment unless the nonmoving party has specifically raised that issue in its opposition to the motion. . . ." (internal citation omitted)). But, again, that is not the case here, as Plaintiff specifically objected to the admissibility of the maintenance records and did so on a meritorious basis requiring those records' exclusion.

In conclusion, the Court finds that the uncertified police accident report, the two illegible pages of the rental agreement, and the rental vehicle's maintenance records should be excluded from the Court's consideration. Additionally, the Court does not determine whether the title and registration are admissible, because there is no actual dispute that EAN Holdings owned the rental vehicle in question—indeed, Plaintiff's claims would be separately and independently meritless if EAN Holdings did not own the vehicle. The remainder of the challenged evidence—the printout of the "WebCriminal" portal and the legible pages of the rental agreement—may be considered in deciding the motion.

The court shall now address the substance of the motion.

II. FACTS

On October 2, 2019, Mateo rented a Hyundai vehicle owned by EAN Holdings. EAN Holdings and its affiliate, ELRAC, do business as "Enterprise Rent a Car," and they are in the business of renting motor vehicles to the general public. Mateo was not a current or former employee of the company or any of its affiliates. At the time Mateo entered into the rental agreement, he produced a facially valid driver's license, as required by EAN Holdings' standard internal policy.

On October 3, 2019, at or about 7:00 a.m., Mateo drove the rented vehicle directly into the Decedent, a 58-year-old school bus driver and Mateo's wife at the time of the attack. Mateo struck Decedent with the rented Hyundai as she was approaching her own parked car on the street in front of her home in Bronx County, knocking her to the ground. Mateo then exited the Hyundai and got into Decedent's own car, which he used to intentionally run her over a second time. He left the second car and proceeded to attack Decedent repeatedly with the sharp edge of a machete, a long-bladed weapon.

Decedent was taken to Jacobi Medical Center and pronounced dead at 9:15 a.m. Her death certificate states that her cause of death was "struck by motor vehicle and assaulted," resulting in "blunt and sharp force injuries of head and torso with brain and visceral organ injuries." An autopsy was performed, as also noted on the death certificate, and her manner of death was determined to be a homicide.

Mateo was arrested on October 22, 2019. He was indicted for, among other charges, intentional murder (Penal Law § 125.25[1]) and manslaughter with intent to cause serious physical injury (*id.* § 125.20[1]).

On November 17, 2021, Mateo entered a guilty plea for manslaughter in the first degree. During the plea allocution in Bronx County Criminal Court, Mateo admitted to the elements of the crime as follows:

> THE COURT: It's charged, Mr. Mateo, that on or about October 3rd, 2019, in Bronx County, you had the intent to cause serious physical injury to Noelia Mateo and you caused her death. Is that true, sir?
>
> THE DEFENDANT: (Through the interpreter) Yes.
>
> […]
>
> THE COURT: Did you run over her with a car?
>
> THE DEFENDANT: (Through the interpreter) Yes.
>
> THE COURT: And did you hit her repeatedly with a machete?
>
> THE DEFENDANT: (Through the interpreter) Yes.

Upon acceptance of the plea, Mateo was sentenced to 23 years in prison (subtracting a two-year credit for time already served) followed by five years of post-release supervision.

III. DISCUSSION

A. EAN Holdings' Motion for Summary Judgment

Because summary judgment is a drastic remedy, "[t]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). Since there can be more than one proximate cause of a motor vehicle collision, a defendant moving for summary judgment is required to make a *prima facie* showing that they are free from fault. *See Carias v. Grove*, 186 A.D.3d 1484 (2d Dep't 2020).

i. *Graves Amendment*

Under 49 USC § 30106(a), commonly known as the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable for harm to persons that results or arises from that vehicle's use, operation, or possession during the period of the rental or lease, provided:

> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or the leasing motor vehicles; and
>
> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

Villa-Capellan, 135 A.D.3d at 556 (quoting 49 USC § 30106(a)). This federal law supersedes New York VTL § 388, which would otherwise impute liability on a vehicle owner for a permissive user's negligence.

One way that a rental company can demonstrate an absence of their own negligence or criminal wrongdoing is through evidence that the vehicle was "regularly maintained" and inspected for defects and that it had no reports of mechanical failure. *Reifsnyder*, 140 A.D.3d at 573. But, as the First Department recognized in *Villa-Capellan*, 135 A.D.3d at 556, a rental company may also make that showing through evidence that a motor vehicle collision was *intentional*.

Here, EAN Holdings has demonstrated its *prima facie* entitlement to the protections of the Graves Amendment. EAN Holdings establishes that it and its affiliates were engaged in the business of renting motor vehicles, and that the vehicle they owned was rented to Mateo as a member of the general public, not as an employee or associate of the company.

EAN Holdings also establishes their lack of negligence or criminal wrongdoing, through evidence—specifically, Mateo's plea allocution and Decedent's death certificate—that the grievous harm at the root of this action was an intentional homicide, not the result of any negligence on the part of the rental company or its affiliates. Generally, "a criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts in a subsequent civil action and collaterally estops a party from relitigating an issue." *Grayes v. DiStasio*, 166 A.D.2d 261, 262-63 (1st Dep't 1990).[3] In *Valle v. Blackwell*, 173 A.D.2d 390, 390 (1st Dep't 1991), the First

[3] Even if it were argued that *res judicata* does not apply, because the party who seeks to relitigate the issue did not have a "full and fair opportunity" to contest it in the prior proceeding, *see D'Arata v. N.Y. Cent. Mut*, 76 N.Y.2d 659, 665-67 (1990), the plea still represents *prima facie* evidence of the facts involved, *Purdie v. Ingram*, 18 A.D.2d

Department reversed a judgment in favor of the victim of a motor-vehicle collision against the Motor Vehicle Accident Indemnification Corporation, on the grounds that the driver had been convicted of assault in the first degree for the incident, and a "finding of intent in the criminal action precludes a finding [in the subsequent civil proceeding] that the act was the result of an accident rather than intent."

In opposition, Plaintiff has raised no issue of fact mandating denial of the motion. As to the rental company's negligence, Plaintiff offers only speculation, and it is well settled that mere speculation is insufficient to defeat a motion for summary judgment. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep't 2004).

Similarly, Plaintiff takes the untenable position that because Mateo's plea does not specifically mention the rental vehicle, instead referring only to "a car," there is no evidence that Mateo acted intentionally when he struck Decedent with the rental car. Essentially, Plaintiff would have this Court accept the narrative that Mateo could have accidently struck Decedent with the rental vehicle and then decided, for reasons beyond this Court's comprehension, to immediately thereafter commit a heinous crime of violence against his wife, which act also happened to involve a vehicle. Plaintiff suggests that the two are separate, unrelated acts. Plaintiff's proffered narrative, which rests solely on technicalities in the wording of the plea allocution, is, however, simply preposterous. Mateo's actions involving the rental vehicle were clearly part of one extended criminal and intentional act.

ii. *Negligent Entrustment*

Movant also seeks to dismiss Plaintiff's claim of negligent entrustment, which would not be barred by the Graves Amendment. A cause of action based in negligent entrustment requires that

> the defendant must either have some special knowledge concerning a characteristic or condition peculiar [to the person to whom a particular chattel is given] which renders [that person's] use of the chattel unreasonably dangerous . . . or some special knowledge as to a characteristic or defect peculiar to the chattel which renders it unreasonably dangerous.

667 (2d Dep't 1962). Here, Mateo's plea constitutes, at the very least, highly convincing *evidence* that the collision was intentional. Plaintiff has presented no countervailing evidence. And, indeed, Mateo himself, as co-defendant herein represented by separate counsel, has not come forward on this motion to contest that his actions were intentional.

Byrne v. Collins, 77 A.D.3d 782, 783 (2d Dep't 2010) (alterations in original) (quoting *Cook v. Schapiro*, 58 A.D.3d 664, 666 (2d Dep't 2009)). Negligent entrustment may be asserted when a motor vehicle owner allows use and operation of the vehicle by "a person [the owner] knew, or in the exercise of ordinary care should have known, was not competent to operate it." *Kornfeld v. Chen Hua Zheng*, 185 A.D.3d 420, 420 (1st Dep't 2020).

Whether a person who permissively operated a motor vehicle possessed a driver's license is a factor to consider in the owner's knowledge of the person's competence. *See Graham v. Jones*, 147 A.D.3d 1369, 1371 (4th Dep't 2017). A rental company's failure to verify that a rental-car customer presented a valid driver's license is one of the few circumstances that has been held to raise a question of fact as to the rental company's negligence. *See Pacho v. Enterprise Rent-A-Car Co.*, 572 F. Supp. 2d 341, 352 (S.D.N.Y. 2008). Beyond that, Plaintiff has cited no legal authority that obligates a rental company to do a more extensive check of the customer's driving record, *see Sigaran v. Elrac, Inc.*, 22 Misc. 3d 1101(A), at *6-7 (N.Y. Sup. Ct. Bronx Cty. 2008), or their criminal history.

Here, Mateo's presentation of a valid driver's license establishes *prima facie* that the rental company verified that he was competent to drive and that they had no special knowledge that it would be unreasonably dangerous to rent a vehicle to him. Further, Plaintiff has offered no evidence that a more thorough screening of this particular customer, even if it was conducted, would have revealed any warning of the danger posed by renting a vehicle to him. EAN Holdings fulfilled their standard duties and obligations, and there is nothing suggesting it had or should have had any knowledge that renting a vehicle to Mateo could result in the acts that he committed the following day.

Even viewing the evidence in the light most favorable to nonmoving party, Plaintiff fails to assert any facts that would support a claim for negligent entrustment or any other theory of negligence on the rental company's part.[4] Accordingly, that part of EAN Holdings' motion seeking summary judgment and dismissal of Plaintiff's Complaint, pursuant to CPLR § 3212 and the Graves Amendment, is **GRANTED**.

[4] To the extent that the Complaint also asserts a claim for negligent hiring and supervision, there is no dispute that Mateo was not employed by EAN Holdings or its affiliates. Any claim for negligent hiring and supervision is, therefore, meritless and dismissed.

B. EAN Holdings' Motion for a Declaration

In additional to dismissal from this action, EAN Holdings also seeks a declaration that it is not obligated to defend, indemnify, or extend financial responsibility on behalf of Mateo in any action related to Decedent's death, because intentional acts are not covered under the provisions of standard automobile liability insurance, the New York financial responsibility laws, or Mateo's rental agreement with EAN Holdings.

Indemnification flows from a contractual relationship. *Westchester Fire Ins. Co. v. Utica First Ins. Co.*, 40 A.D.3d 978, 979 (2d Dep't 2007) (citation omitted). "The duty to indemnify requires a covered loss and will ultimately turn on the actual facts of the case." *Id.* at 980 (internal quotation marks and citations omitted).

An insurer's duty to defend, however, is broader than the duty to indemnify. *Bovis Lend Lease LMB Inc. v. Garito Contracting, Inc.*, 65 A.D.3d 872, 875 (1st Dep't 2009).

> A declaration that an insurer is without obligation to defend a pending action could be made "only if it could be concluded as a matter of law that there is no possible factual or legal basis on which [the insurer] might eventually be held to be obligated to indemnify [the insured] under any provision of the insurance policy."

Id. (quoting *Servidone Cons. Corp. v. Security Ins. Co. of Hartford*, 64 N.Y.2d 419 (1985)). "[T]he duty to defend is triggered if facts alleged in the complaint fall within the scope of coverage intended by the parties at the time the contract was made." *N.H. Ins. Co. v. Jefferson Ins. Co. of N.Y.*, 213 A.D.2d 325, 326-27 (1st Dep't 1995).

Here, EAN Holdings is potentially under the duty to indemnify Mateo based on the underlying insurance policy of the rental vehicle. New York state mandates that certain businesses, including self-insured rental car companies, maintain accident insurance coverage of $25,000 for bodily injury and $50,000 for death, which inures to the benefit of any person legally and permissively operating the motor vehicle. *See* VTL § 370(1), (3); *ELRAC, Inc. v. Ward*, 96 N.Y.2d 58, 72 (2001).[5] This required coverage includes a duty to defend, which "arises whenever the

[5] Significantly, this statutory requirement to provide minimum insurance applies to owners in the business of renting and leasing vehicles, notwithstanding the Graves Amendment. The statute has been upheld as a "financial responsibility law" within the meaning of 49 USC § 30106(b) and is not superseded by the federal act. *See 37 S. Fifth Ave. Corp. v. Dimensional Stone & Tile*, 58 Misc. 3d 56 (N.Y. App. Term 2d Dep't 2017). Nonetheless, renters and lessors remain exempt from vicarious liability by virtue of the Graves Amendment. In practice, where a rental car driver has primary insurance and the rental agreement contains exclusions and indemnification clauses, the mandatory coverage simply "ensures that commercial renters and lessors of such vehicles will be financially capable of covering a statutorily specified minimum amount of damage for the types of liability which continue even following the passage

allegations in the complaint against the insured fall within the risks covered by the insurance policy." *Id.* at 75 n 4 (quoting *Agoado Realty Corp. v. United Int'l Ins. Co.*, 95 N.Y.2d 141, 145 (2000)).

If EAN Holdings has any duty to indemnify Mateo for the pain, suffering, and death inflicted on Decedent by the use of EAN Holdings' rental car, that duty would arise from the rental insurance policy, as executed by the Mateo. The written rental agreement signed by Mateo includes the following bolded language on its first and second page:

> ATTENTION: Enterprise purchases no third-party insurance covering this rental, but provides its renters and authorized drivers with minimum liability coverage, as required by the New York Vehicle and Traffic Law. These coverages are: $25,000 per accident for bodily injury to one individual . . . [and] $50,000 per accident for the death of one individual . . . . In addition, to the extent required by law, Enterprise will defend the renter and authorized drivers from all claims of third parties alleging bodily injury, death or property damage arising out of the operation of the rental vehicle. If additional liability coverage is desired you may purchase Supplemental Liability Coverage from Enterprise at an additional cost."

The signed rental agreement shows Mateo declined to purchase Supplemental Liability Coverage.

The Court notes that any further particulars of Mateo's rental agreement, including express "termination" of his permissive use by certain acts, were not properly entered into evidence by EAN Holdings. As discussed *supra*, the "fine print" terms and conditions page was illegible in the copy submitted and is thus inadmissible under CPLR § 2101(a). Accordingly, the Court bases its decision not on the full rental agreement and its purported exclusions or termination clauses, but on the limitations of the policy as described above, the minimum statutory requirements of VTL § 370, and the general principles of law regarding both the financial responsibility statute and coverage of intentional acts.

VTL § 370 and Mateo's rental agreement refer exclusively to "accidents" when describing covered losses. As quoted above, the rental agreement refers to its minimum coverage amounts "per *accident*." VTL § 370(1), on which the agreement's terms are based, also provides that these minimum amounts apply to "damages, including damages for care and loss of services, because of bodily injury to or death of any one person in any one *accident*."

Even without explicit language excluding intentional acts, it is not only common sense but well-established law that consciously attacking another person with a deadly weapon does not

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of the Graves Amendment, i.e., when the liability is based on the commercial renters' or lessors' own negligence or criminal wrongdoing." *Id.* at 59.

constitute an "accident" within the plain meaning of that word. In *Allstate Insurance Co. v. Bostick*, 228 A.D.2d 628 (2d Dep't 1996), on a set of facts tragically similar to this case, the Second Department held that the words "accidents arising out of the ownership, maintenance, or use" in a driver's insurance policy did not apply to that driver's actions of "turning her vehicle around, accelerating, and striking decedent with enough force to crush his skull"—an act for which the driver was indicted (but acquitted) for intentional murder and ultimately convicted of "depraved indifference" murder. The Second Department found that these acts could not possibly be deemed an "accident" within the meaning of the policy and affirmed the trial court's decision to relieve the insurer of their duty to defend or indemnify.

More recently, in *Adirondack Insurance Exchange v. Rodriguez*, 215 A.D.3d 904, 905 (2d Dep't 2023), the Second Department stated plainly that "[a]n intentionally caused or staged vehicular collision is not a covered accident under an insurance policy." The reasons for this are obvious when the motive is insurance fraud, but the ruling is just as apt to intentional battery or murder, as is the case here. The driver's motives need not be proven, only that the collision was intentional, not an accident from perspective of the insured policyholder.[6] "When a collision is intentionally caused, the insurer is not obligated to provide coverage, even to innocent third parties." *Id.* at 905. To hold otherwise, even to the immediate benefit of an innocent party, would reward the perpetrator's intentional or even criminal acts by allowing them to shift financial responsibility to their insurer.

Thus, insurers moving for judgment as a matter of law that a loss is not covered by their policy, and therefore they have no duty to indemnify, may do so "by demonstrating, through admissible evidence, that the subject collision [was] intentionally caused or staged," and judgment shall be granted when no triable issue of fact is raised in opposition. *Nat'l Gen. Ins. Online v. Blasco*, 210 A.D.3d 786, 787 (2d Dep't 2022).

Here, EAN Holdings has presented ample evidence of the intentional nature of Mateo's actions in the form of his guilty plea for manslaughter with intent to cause serious injury. As

[6] In *State Farm Mutual. Auto Insurance. Co. v. Langan*, 16 N.Y.3d 349, 352 (2011), the Court of Appeals held that an intentional act could be deemed an "accident" for the purpose of the insured *victim's* coverage (where the driver who pleaded guilty to second-degree murder was uninsured, and the damages were sought under the victim's own "uninsured/underinsured motorist" policy) because, from the policyholder's perspective, the collision was unexpected, unusual, and unforeseen. But the Court's decision strongly emphasized that "the occurrence must be viewed from the insured's perspective." Where the insured person is the driver who *committed* the intentional act, it cannot be viewed as an unexpected or unforeseen "accident," and it is not sound public policy for such acts to be covered by that person's insurer.

already discussed *supra*, the Court rejects Plaintiff's attempt to raise an issue of fact based on technicalities in the wording of the plea allocution.

Because EAN Holdings has demonstrated through admissible evidence that the subject motor-vehicle collision was "intentionally caused," it cannot be deemed an "accident" covered under their standard VTL § 370(1) minimum insurance policy or the text of the rental agreement signed by Mateo. Plaintiff and Mateo have raised no triable issue of fact in response. Mateo, despite being represented by separate counsel, has not even opposed the motion.

Accordingly, EAN Holdings has no duty to indemnify Mateo for the collision, even when the benefit of their policy would go to an innocent third party. Though this leaves the innocent decedent with one less defendant to seek compensation from, public policy prohibits requiring an insurer to provide coverage for intentional violent acts under "accident" insurance, as to do so would allow the intentional tortfeasor to be indemnified and protected from liability for his deliberate actions.

In light of this holding and Mateo's prior guilty plea for manslaughter with intent to cause serious injury, there is no factual or legal basis for ever finding EAN Holdings obligated to indemnify Mateo under the provisions of the policy. Accordingly, EAN Holdings and their affiliates are also relieved of their broader duty to defend Mateo.

Again, there is no substantive opposition to this part of the motion, nor any question of fact or law as to EAN Holdings' obligations. For these reasons, that part of the motion that seeks summary judgment on the fifth affirmative defense and a declaration that EAN Holdings and their affiliates have no duty to defend, indemnify, or extend financial responsibility on behalf of Mateo in this or any other action related to his intentional striking of Decedent with EAN Holdings' rental vehicle is **GRANTED.**

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the parties was not addressed by the Court, it is hereby denied.

Accordingly, it is:

ORDERED that the part of defendant EAN HOLDINGS, LLC's ("EAN Holdings") motion (Seq. No. 1) that seeks an order, pursuant to CPLR §§ 3211(a)(7) and 3212, granting

summary judgment to EAN Holdings dismissing the Complaint on the ground that it is barred by 49 U.S.C. § 30106 is **GRANTED**; and it is further

ORDERED that the part of EAN Holdings' motion (Seq. No. 1) that seeks an order, pursuant to CPLR §§ 3001, 3017, and 3212, granting a declaration, based on EAN Holdings' fifth affirmative defense, that EAN Holdings and its affiliates are not obligated to defend, indemnify, or extend financial responsibility on behalf of co-defendant VICTOR MATEO ("Mateo") in this or any related action is **GRANTED**; and it is further

ADJUDGED and **DECLARED** that EAN Holdings and its affiliates are not obligated to defend, indemnify, or extend financial responsibility on behalf of Mateo in this or any related action arising from the events that occurred on October 3, 2019; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint as against EAN Holdings and severing the remaining action; and it is further

ORDERED that the caption of this action shall henceforth read:

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ANGIE NOELIA ROMERO as Proposed Administrator
of the Estate of NOELIA MATEO,

Plaintiff,

-against-

VICTOR MATEO,

Defendant.

----------x

; and it is further

ORDERED that EAN Holdings shall file a NYSCEF form EF22[7] to permit the amendment of the caption by September 15, 2023; and it is further

ORDERED that the Clerk shall mark the motion (Seq. No. 1) decided in all court records.

[7] NYSCEF Form EF22 can be found at: https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf

This constitutes the decision and order of the Court.

Dated: August 22, 2023

Hon. s/Hon. Veronica G. Hummel/signed 08/22/2023
HON. VERONICA G. HUMMEL, A.J.S.C.

1.	CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY			☒ CASE STILL ACTIVE	
2.	MOTION IS.....	☒ GRANTED	☐ DENIED	☐ GRANTED IN PART		☐ OTHER
3.	CHECK IF APPROPRIATE.....	☒ EDIT CAPTION				