

Vasquez v City of New York

2024 NY Slip Op 30954(U)

March 21, 2024

Supreme Court, New York County

Docket Number: Index No. 154119/2023

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

Plaintiff commenced this action against the City of New York, P.O. John Doe, Daimler Trust, and Ada Vasquez on May 5, 2023. Issued was joined by Daimler on August 8, 2023. Daimler brought the instant motion on February 8, 2024.

In support of the motion, Daimler contends that Plaintiff failed to state a cause of action, and summary judgment is proper because Daimler is the owner/lessor of the vehicle and as such cannot be held liable for Plaintiff's injuries pursuant to Federal Statute 49 United States Code § 30106. Daimler proffers a copy of the lease agreement between Silver Star Motors and Defendant Vasquez and an affidavit by Todd McClurg, Collections Group Leader for Mercedes-Benz Financial Services USA LLC. Daimler avers that Defendant Vasquez is not an agent, servant, or employee, and was not acting on the express or implied authorization of Daimler (NYSCEF Doc No. 19, McClurg affidavit ¶ 5). Further, Daimler does not have any knowledge of the circumstances surrounding the accident and aside from the lease agreement, there was no relationship between Daimler and Defendant Vasquez (*id.* ¶¶ 6, 8). Lastly, Daimler did not control, operate, or maintain the vehicle that was involved in the accident (*id.* ¶ 7). Daimler's motion is unopposed, and the parties do not dispute the fact that the vehicle Defendant Vasquez was driving at the time of the accident was leased to him by Daimler.

DISCUSSION

Defendant first moves to dismiss the claims against Daimler pursuant to CPLR § 3211 (a)(7) for failure to state a cause of action because Daimler is lessor of the vehicle involved in the accident on October 17, 2022. On a motion to dismiss brought under CPLR 3211 (a) (7), the court must "accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citations omitted]). Ambiguous allegations must be resolved in the plaintiff's favor (*see JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). "The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). "However, when evidence is submitted on a motion to dismiss, we look to whether plaintiff has a cause of action, rather than whether it is pleaded" (*Braun v Lewis*, 99 AD3d 574 [1st Dept 2012]; *citing Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Defendant also moves pursuant to CPLR § 3212 for summary judgment to dismiss Plaintiff's Complaint on the grounds that Federal Statute 49 United States Code § 30106 precludes liability against the leasing company in a motor vehicle accident. Pursuant to CPLR § 3212(b), a motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate*

Appraisers & Auctioneers, Inc. v Rabizadeh, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon proffer of evidence establishing a prima facie case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

“Under the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if - (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or 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 v Mendoza*, 135 AD3d 555, 556 [1st Dept. 2016]). “Generally, a party seeking dismissal based on the Graves Amendment has the burden of establishing prima facie that they are engaged in the business of renting or leasing motor vehicles, that they leased the vehicle involved in the subject accident, and that said accident occurred during the period of the lease” (*White v Avellanet*, 816003/2022E, 2024 WL 906108, at *2 (Sup Ct, NY County 2024)). “If the plaintiff has alleged negligent maintenance, the movant must also establish there was no negligence on their part, as a direct negligence claim is not barred by the Graves Amendment” (*White v Avellanet*, 816003/2022E, 2024 WL 906108, at *2 (Sup Ct, NY County 2024)).

In support of its motion, Daimler submits a copy of the lease agreement and an affidavit from Todd McClurg to establish that it leased the subject vehicle to Defendant Vasquez, the accident occurred during the lease period, and Daimler is in the business of acquiring leases and the vehicles related thereto. Daimler’s evidence is sufficient to establish that the vehicle Defendant Vasquez drove on October 17, 2022, was leased to him by Daimler, that the accident occurred during the lease period of January 14, 2021, to January 14, 2024, and that Daimler is engaged in the business of leasing motor vehicles. Daimler’s evidence also establishes that Daimler did not control or operate the subject vehicle at the time of the accident and that Defendant Vasquez was not in the employ or otherwise acting on behalf of Daimler. As such, there is no material issue of fact regarding Daimler’s status as lessor of the vehicle. Plaintiff does not allege that Daimler negligently maintained the vehicle, and as such, Daimler is not required to show that it did not negligently maintain the vehicle. Accordingly, Daimler has made a *prima facie* showing that it is entitled to summary judgment by demonstrating that it was lessor of the subject vehicle driven by Defendant Vasquez, and summary judgment dismissal of Plaintiff’s complaint is warranted.

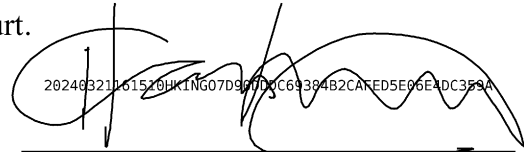
Accordingly, it is

ORDERED that the motion for summary judgment is granted and the complaint is dismissed against them; and it is further

ORDERED that the claims against the remaining defendants are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Daimler Trust and dismissing the claims against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

3/21/2024

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE