

Ramirez v Teixeira Bakery

2024 NY Slip Op 33008(U)

August 23, 2024

Supreme Court, New York County

Docket Number: Index No. 450691/2019

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

MIGUEL RAMIREZ, Plaintiff, - v - TEIXEIRA BAKERY, ANTONIO SILVA, JOHN DOE, THE DRIVER WHOSE IDENTITY IS UNKNOWN, THE CITY OF NEW YORK Defendant.
INDEX NO. 450691/2019
MOTION DATE 12/22/2022, 01/27/2023
MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 110, 112, 113, 116, 118, 119, 121, 123, 125

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 114, 115, 117, 120, 122, 124

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, motion sequence numbers 3 and 4, which are consolidated for the courts' consideration and disposition in this single decision/order, are decided as follows.

This is a personal injury action arising from a motor vehicle accident that occurred on August 11, 2016. Plaintiff was injured while performing road work in a closed-off lane of southbound traffic on Harlem River Drive near 155th Street in Manhattan when he was struck in the right leg and arm by the front passenger side of a truck that had been allegedly stolen earlier that day while left at a gas station unattended in Ridgefield Park, New Jersey.

The truck was owned by defendant Teixeira Bakery (the "Bakery") and was being operated by defendant Antonio Silva before it was stolen.

In motion sequence 3, the Bakery and Silva move for summary judgment dismissing plaintiff's complaint. In motion sequence 4, defendant The City of New York (the "City") also moves for summary judgment dismissing plaintiff's complaint and all crossclaims. Plaintiff opposes the Bakery and Silva's motion cross-moves for summary judgment in his favor against the Bakery and Silva. There is no opposition to motion sequence 4.

At the outset, the City's motion is granted on default and plaintiff's claims against the City are severed dismissed.

The remaining parties argue whether New Jersey or New York law applies. The Bakery and Silva maintain that since the truck was stolen in New Jersey, New Jersey law applies and that the defendants are entitled to summary judgment because it was not foreseeable that the truck would be stolen since the gas station was not a high crime area. Silva testified that he left his truck unattended for thirty seconds, with the keys in the ignition and running five feet from the gas station entrance and stopped all the time at the gas station without incident.

Meanwhile, plaintiff maintains that New York law applies because the tort occurred in New York and "thus, the tort, the negligent ownership and operation of the truck resulting in injury arises in New York, mandating that New York's conduct-regulating issues are applied." Plaintiff further contends that defendants did not meet their burden on the motion even if New Jersey law applies by showing that the vehicle was not left in a high crime area through admissible evidence.

"When the defendant's negligent conduct occurs in one jurisdiction and the plaintiff's injuries are suffered in another, the place of the wrong is considered to be the place where the last event necessary to make the actor liable occurred" (*Schultz v. Boy Scouts of Am., Inc.*, 65 NY2d 189, 195 [1985]). As defendants correctly point out, but for Silva's act of leaving the

unattended car running at the gas station, neither Silva nor the Bakery would be liable for plaintiff's injuries. Therefore, New Jersey law must be applied since the last acts that occurred which would make Silva and the Bakery liable for plaintiff's accident occurred in New Jersey.

However, the court agrees with plaintiff that defendants have not shown that they cannot be held liable under New Jersey law as a matter of law. On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Under New Jersey law, a car owner/operator is under a duty "predicated on foreseeability of an increased hazard of theft and subsequent mishandling of an automobile" (*Hill v. Yaskin*, 75 NJ 139 [1977]). In *Hill, supra*, the Supreme Court of New Jersey considered the fact that the area where the subject vehicle was stolen from was "a high crime area and had experienced a history of vandalism." The closest thing to admissible evidence on this record regarding the New Jersey gas station from which this truck was stolen from is Silva's subjective testimony that he stopped at the gas station all the time. This is insufficient for the court to determine that the gas station

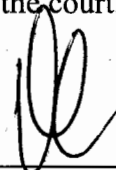
was not a high traffic area and more importantly, if so, whether Silva violated “a duty predicated on foreseeability of an increased hazard of theft and subsequent mishandling of an automobile”.

Accordingly, based on the foregoing, it is ORDERED that motion sequence 4 is granted on default and plaintiff’s claims and all crossclaims against defendant The City of New York are severed and dismissed; and it is further

ORDERED that motion sequence 3 is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

8/23/2024
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE