

**Walsh v Ryder Truck Rental, Inc.**

2024 NY Slip Op 33496(U)

September 11, 2024

Supreme Court, New York County

Docket Number: Index No. 151370/2024

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

INDEX NO. 151370/2024
MOTION DATE 09/06/2024
MOTION SEQ. NO. 001

DANIEL WALSH, GERARD WALSH,

Plaintiff,

- v -

RYDER TRUCK RENTAL, INC., NEWS CORPORATION,
JIMMY SOTO, JR.

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, the motion by Plaintiffs for partial summary judgment on the issue of liability, dismissing Defendants' affirmative defenses of culpable conduct on the part of Plaintiffs, and dismissing Defendants' counterclaim against Plaintiff Gerard Walsh is decided as follows:

Plaintiffs seek recovery for injuries allegedly sustained as a result of a November 16, 2023 motor vehicle accident between a vehicle operated by Plaintiff Gerard Walsh within which Plaintiff Daniel Walsh was a passenger, and a vehicle owned by Defendant Ryder Truck Rental and operated by Defendant Soto within the course of his employment with Defendant News Corporation.

In support of their motion, Plaintiffs rely on a certified police report and the affidavits of Plaintiffs. The certified police report states that Plaintiff Driver stated there was a red light when he was rear ended by Defendants' vehicle causing him to crash into the light post. The report

further states that Defendant Soto stated that he spilled coffee into his lap causing him to rear end Plaintiffs' vehicle.

Plaintiff Daniel Walsh avers that he was the passenger in a vehicle operated by his brother Gerard Walsh, they were stopped at a red light on West 175<sup>th</sup> Street at its intersection with Fort Washington Avenue for approximately thirty seconds when suddenly and without warning their vehicle was struck in the rear by a van, pushed through the intersection and into a pole.

Plaintiff Gerard Walsh avers that he was driving with his brother, Daniel Walsh, who was seated in the front passenger seat, stopped at a red light on West 175<sup>th</sup> Street at its intersection with Fort Washington Avenue for approximately 30 seconds when suddenly and without warning, his vehicle was struck in the rear by a van, that he subsequently learned was owned and operated by Defendants. Plaintiff Driver further avers that as a result of being struck, his vehicle was pushed through the intersection into a pole.

In opposition, Defendants contend that Defendant Ryder Truck Rental, Inc. is exempt from liability under the Graves Amendment. Defendants further contend that Plaintiff's motion is premature, and that there is admissible evidence to support Defendants' non-negligent explanation for the accident.

In reply, Plaintiffs contend that Defendants fail to raise an issue of fact to preclude summary judgment in their favor. Plaintiffs further contend that Defendants cannot rely on the hearsay statement attributed to Defendant Soto in the Police Accident Report to establish a non-negligent excuse for the collision, and even if they could, the emergency doctrine would not apply here. With regard to Defendant News Corporation, Plaintiffs contend that they are entitled to summary judgment on the issue of liability because Defendants admitted in their Answer that at the time of the subject accident Defendant Soto was operating his vehicle during the course of his

employment with News Corporation and in opposing Plaintiffs' instant motion, Defendants have submitted no evidence to the contrary. With regard to Defendant Ryder, Plaintiffs contend that the lease submitted is not authenticated, there is no evidence that connects the lease to this matter, and there is no identifiable information in the lease that connects it to the subject vehicle.

Plaintiffs have established prima facie entitlement to summary judgment on the issue of liability through their affidavits in which they aver that they were stopped at a red light for about 30 seconds when they were hit in the rear. A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless the defendant proffers a non-negligent explanation for the failure to maintain a safe distance (*Mitchell v Gonzalez*, 269 AD2d 250 [1st Dept 2000]). A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between themselves and cars ahead of them so as to avoid collisions with stopped vehicles, taking into account weather and road conditions (*Id.* at 251). The burden therefore shifts to Defendants to provide a non-negligent explanation for the accident (*Mullen v Rigor*, 8 AD3d 104 [1st Dept 2004]).

In opposition Defendants failed to raise an issue of fact. Contrary to their contention, Plaintiffs' motion is not premature because Defendant Soto has personal knowledge of relevant facts and failed to submit an affidavit in opposition to the motion (*Avant v Cepin Livery Corp*, 74 AD3d 533 [1st Dept 2010]). It is well settled that a party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant (*Flores v City of NY*, 66 AD3d 599 [1st Dept 2009]). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion (*Davis v Turner*, 132 AD3d 603

[1st Dept 2015]). There must be some evidentiary basis that the discovery may lead to evidentiary evidence.

Defendants' contention that Defendant Soto was faced with an emergency situation not of his own doing of spilling coffee on his lap is unavailing (*see Williams v Barclay*, 2020 N.Y. Misc. LEXIS 5861 [Sup Ct, Bronx County Mar. 9, 2020, No. 30052/2019E]).

With regard to any alleged culpable conduct by Plaintiffs, Plaintiffs' affidavit in which they aver that theirs was the lead vehicle in this accident and struck from the rear by Defendants' vehicle is not refuted. Therefore, Defendants' affirmative defenses relating to culpable conduct are stricken (*see CPLR 3212 [g]*).

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 [1st Dept 2016]). A claim based upon negligent maintenance is not barred by the Graves Amendment because it does not absolve leasing companies of their own negligence (*Collazo v MTA-New York City Tr.*, 74 AD3d 642 [1st Dept 2010]). Here, Defendants submit the lease agreement between NYP Holdings, Inc. and Defendant Ryder. However, the lease alone is insufficient to raise an issue of fact and have failed to submit sufficient evidence establishing entitlement to Graves Amendment protection. Defendants fail to submit evidence, such as an affidavit of a person with personal knowledge, that adequately explains the relationship between NYP Holdings, Inc., the lessor or assignee of the lease, and the

Defendants in this matter and sufficiently authenticates the lease (*Bailey v Gabrielli Truck Leasing LLC*, 210 AD3d 573 [1st Dept 2022]).

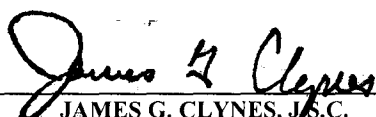
Accordingly, it is

**ORDERED** the motion by Plaintiffs for partial summary judgment on the issue of liability, dismissing Defendants' affirmative defenses of culpable conduct on the part of Plaintiffs, and dismissing Defendants' counterclaim against Plaintiff Gerard Walsh is granted without prejudice as to Defendant Ryder only to filing a motion to dismiss pursuant to the Graves Amendment within 20 days of Notice of Entry; and it is further

**ORDERED** that within 30 days of entry, Plaintiffs shall serve a copy of this Decision and Order upon Defendants with Notice of Entry.

This constitutes the Decision and Order of the Court.

9/11/2024  
DATE

  
JAMES G. CLYNES, J.S.C.

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