

Roa v City of New York

2024 NY Slip Op 34069(U)

November 15, 2024

Supreme Court, New York County

Docket Number: Index No. 152162/2024

Judge: J. Machelle Sweeting

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

FRANCISCO ROA,

Plaintiff,

- v -

THE CITY OF NEW YORK, LUIS VARGAS, YAJAIRA
MENDEZ-ANCHUNDIA

Defendant.

-----X

INDEX NO. 152162/2024

MOTION DATE 07/17/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

In this case, which arises out of a motor vehicle accident, defendant Yajaira Mendez-Anchundia (hereinafter “defendant”) moves to dismiss the claims asserted against her under CPLR § 3211. Plaintiff opposes the motion. For the reasons below, the court grants the motion.

The complaint (NYSCEF Doc. No. 23) asserts that, on March 15, 2023, the date of the accident, defendant owned a 2011 Nissan vehicle with the New Jersey registration number R55JXX, and co-defendant Luis Vargas (Vargas) was the driver. Co-defendant The City of New York (the City) owned a 2014 Ford vehicle registered with the New York City Police Department, registration number GRS3653. Plaintiff was a passenger in the police vehicle. The complaint states that Vargas drove defendant’s vehicle “in such negligent and careless fashion as to cause a collision to occur, causing severe personal injuries to the plaintiff” (*id.*, ¶ 16). Both the City and defendant have answered the complaint. Currently, Vargas is in default.

Defendant seeks dismissal on the grounds that she did not own, possess, or drive the 2011 Nissan when the accident occurred. She submits an affidavit in which she explains that “[o]n June 18, 2022, I traded in the 2011 Nissan motor vehicle with Matt Blatt Dealerships (*id.*, ¶ 4). She further swears that she “obtained a document from the Department of Motor Vehicles removing the License Plate Number R55JXX” (*id.*, ¶ 5). In addition, she denies knowing Vargas or giving him permission to drive the 2011 Nissan. She submits a copy of the sales document evidencing that, on June 18, 2022, she traded in a 2011 Nissan Rogue, an SUV, for a 2019 Nissan Rogue (NYSCEF Doc. No. 30). Also, defendant submits a document entitled “Motor Vehicle Commission Fee Payment Authorization Form,” which notes that on November 14, 2022, plaintiff sought to remove license plate R55JXX from the 2011 Nissan because she had traded in the vehicle (NYSCEF Doc. No. 31). The Police Accident Report that defendant submits does not provide the serial number JN8AS5MTOBW56730, which is included in the sales document, but it identifies the vehicle as a 2011 Nissan SUV and includes defendant’s license plate number (NYSCEF Doc. No. 26). Defendant argues that this evidence conclusively establishes her right to dismissal, and she contends that a court may consider documents under CPLR § 3211 (a) (7) as well as CPLR § 3211 (a) (1) to determine whether the complaint has a cause of action.

In opposition, plaintiff objects on the grounds that the police report is not certified, and that defendant’s affidavit does not constitute documentary evidence for the purpose of CPLR § 3211 (a) (1). Additionally, plaintiff alleges that the license plate was still registered to defendant on the accident date because it was still on the car. Plaintiff submits an affidavit which states that the New Jersey license plate was inside the 2011 Nissan and that the license plate matched the serial number JN8AS5MTOBW56730 for defendant’s car. Further, he alleges that the New Jersey State Police

allegedly confirmed that defendant still owned the license plate, and that defendant did not return the plate to the Department of Motor Vehicles (NYSCEF Doc. No. 33).

Defendant replies that under Vehicle and Traffic Law § 128, ownership exists when the person has “the property in or title to a vehicle.” Defendant further cites *Gonzalez v Zaki’s Auto Sales Corp.* (183 AD3d 623, 624-625 [2d Dept 2020]) for the principle that ownership ends once there is a sale that transfers the car to a purchaser. Quoting *Gawrych v Astoria Fed. Sav. & Loan* (148 AD3d 681, 683 [2d Dept 2017]), she reiterates that “where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the question becomes whether the plaintiff has a cause action, not whether the plaintiff has stated one, and unless it has been shown that a material fact, as claimed by the plaintiff to be one, is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate.” Defendant states that the documents are conclusive as to the facts and that plaintiff has not shown what outstanding evidence would clarify the issue of defendant’s liability.


The court grants defendant’s motion. As defendant correctly contends, ownership of a vehicle ends once the owner sells the vehicle to another party (*see Gonzalez*, 183 AD3d at 624-625). Title passes “when the parties intend such a transfer to occur” (*Godfrey v G.E. Capital Auto Lease, Inc.*, 89 AD3d 471, 477 [1st Dept 2011] [stating trial court was correct in denying portion of plaintiff’s motion to set aside the portion of the verdict finding that defendant G.E. Capital Auto Lease, Inc. bore no liability]). In addition, even where “the registration and license plates of the vehicle driven by [a third party] were still in [the prior owner’s] name at the time of the accident,” where the vehicle is sold and transferred prior to the accident, the prior owner is not liable (*id.*). Further, although defendant’s affidavit would not suffice, alone, to warrant dismissal, along with counsel’s affirmation, it effectively introduces and affirms the information in the critical

documents on which her motion relies. Finally, the transfer and other documents are sufficient to warrant the dismissal of the action as against defendant, and plaintiff has not challenged their authenticity or stated what outstanding discovery may create an issue of fact as to defendant's ownership. Accordingly, it is

ORDERED that the motion of defendant Yajaira Mendez-Anchundia to dismiss the complaint against her is **GRANTED**. The complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the caption be amended to remove Yajaira Mendez-Anchundia as a named defendant in this action and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party must serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein.

<u>11/15/2024</u> DATE					 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	<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"/>	REFERENCE
				<input type="checkbox"/>	