

Tull v Adam

2024 NY Slip Op 34484(U)

December 3, 2024

Supreme Court, Kings County

Docket Number: Index No. 507672/2020

Judge: Lisa S. Ottley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

SHARON R. TULL and VALENCIA Y. GRIMES,

Plaintiff,

-against-

DECTERINO ADAM, KAREEM YOUNG and
XUESHANG YU,

Defendants,

Mot. Seq. # 2

Index # 507672/2020

DECISION and ORDER

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion Renew and Summary Judgment submitted on April 29, 2024.

Papers	Numbered
Notice of Motion and Affirmation	1&2 [Exh. A-J]
Affirmation/Affidavit in Opposition.....	3and 4 [Exh. 1-4]
Reply Affidavit/Affirmation.....	5

Defendant, Kareem Young, moves for leave to renew the Court’s decision and order dated February 18, 2022, and upon granting the defendant’s leave to renew, granting defendant, Kareem Young’s motion for summary judgment pursuant to CPLR 3212 on the issue of liability, and dismissing plaintiffs’ complaint in its entirety with prejudice. Plaintiffs and Defendant, Xueshang Yu, oppose defendant, Young’s motion to renew and for summary judgment on the grounds that the motion is premature since discovery has not been conducted; and there are issues of fact which preclude summary judgment.

This matter was heard by the Hon. Karen Rothenberg who on February 18, 2022, issued a decision and order denying defendant, Kareem Young’s motion for summary judgment without prejudice and with leave to renew upon submission of further papers:

After careful consideration of the moving papers, opposition and reply thereto, the court finds as follows:

Discussion

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination” (CPLR 2221[e][2]) and “shall contain

reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]; see, Makropoulos v. City of New York, 187 A.D.3d 885, 888, 130 N.Y.S.3d 378 [2nd Dept., 2020]).

The defendant, Kareem Young's motion to renew is hereby granted. Defendant's initial motion for summary judgment was denied without prejudice and with leave to renew upon submission of further papers.

The defendant, Kareem Young, has submitted, as per the Hon. Karen B. Rothenberg's decision and order, "a certified copy of the DMV Investigation report relating to the unauthorized registration of the offending vehicle, as well as copies of any and all documents, forms, etc., filed by Young in connection with such DMV investigation." Plaintiffs and defendant, Xueshang Yu, opposed defendant, Kareem Young's summary judgment on the grounds that the documentary proofs submitted by Mr. Young were uncertified and inadmissible. Defendant Young, having now obtained certified copies of the DMV Investigation report relating to the unauthorized registration of the offending vehicle, and copies of documents and forms submitted in connection with the DMV investigation, moves upon this court granting leave to renew, for summary judgment on the issue of liability as it relates to his ownership and unauthorized use of the offending vehicle.

In opposition to Kareem Young's motion for summary judgment, the plaintiffs and defendant, Xueshang Yu, argue that there are issues of fact which preclude summary judgment from being granted, and even though the submissions are certified, they contain numerous instances of hearsay that should not be considered for the truths of the matters asserted. In addition, they contend that defendant Young's motion is premature since discovery has not been conducted of Kareem Young. The court has reviewed and taken into consideration the papers filed in opposition to the initial summary judgment, and notes that the arguments remain the same as to why defendant, Kareem Young's summary judgment should not be granted. The arguments are raised by and through attorney affirmations, and do not include affidavits from the plaintiffs, Sharon R. Tull, Valencia Y. Grimes, nor defendant, Xueshang Yu. Defendant Decterino Adam has not appeared in this action.

Under Vehicle and Traffic Law 388(1), with the exception of bona fide commercial lessors of motor vehicles which are exempt from vicarious liability under federal law, the negligence of the owner of a motor vehicle is liable for the negligence of one who operates the vehicle with the owner's express or implied consent. See, Rodriguez v. Morales, 217 A.D.3d 695, 190 N.Y.S.3d 452 (2nd Dept., 2023). The statute creates a presumption that the driver was using the vehicle with the owner's express or implied permission, which may be rebutted only by substantial evidence sufficient to show that the vehicle was not operated with the owner's consent. Rodriguez v. Morales, supra.

The court finds that the defendant, Kareem Young, has rebutted the presumption of permissive use. In support of his motion for summary judgment, which was previously denied with leave to renew and upon submission of certified copies of documents, Mr. Young has

annexed certified copies of the documents submitted to the DMV showing that the vehicle was reported for unauthorized use of license and registration on May 23, 2019 and February 25, 2020 (See, NYSCEF Doc. #54); a certified copy of a letter from Investigator B. Goodrich, dated December 11, 2020 of the DMV Division of Field Investigation stating that it was determined that Mr. Young's information was used by another, and an "Illegal Registration" was issued for that vehicle transaction, and according to the NYS DMV records Mr. Young was no longer listed as the owner or registrant of the vehicle, a 1999 Toyota Corolla VIN: 2T1BR12E6X219994. The letter, in its opening paragraph reference's that the DMV was in receipt of Mr. Young's Report of Unauthorized Use of License/Registration (Form F1-17), which Mr. Young annexed as Exh. "G" to his moving papers. The defendant also annexes a certified copy of the NYS DMV's Field Investigative Report dated January 05, 2021, which references the vehicle involved in the accident, and details the investigation conducted by Investigator B. Goodrich, who determined that the vehicle was illegally registered and titled to Mr. Young. Contrary to the defendant, Xueshang Yu's attorney's affirmation in opposition to defendant, Young's motion for summary judgment, Mr. Young's affidavit does address that upon learning about the accident that he reported it to the police on the same day; he did not know the occupants of the vehicle; did not insure, park or garage the subject vehicle; has never known anyone by the name of Decterino Adam, and never spent any time in Rochester, N.Y.

The evidence supports and rebuts the presumption of permissive use. The investigative reports and findings of the NYS DMV show that the defendant, Kareem Young, made a complaint to the police and filed documents with the NYS DMV relating to unauthorized use and registration of the vehicle. See, *Nelson v. Ford Motor Credit Company*, 41 A.D.3d 444, N.Y.S.2d (2nd Dept., 2007), where the court concluded that the defendant submitted substantial evidence that the offending driver lacked express permission to use his vehicle and that there was an absence of evidence from which authority could be inferred. See, also, *Adamson v. Evans*, 283 A.D.2d 527 [2nd Dept., 2001]; *Bruno v. Privilegi*, 148 A.D.2d 652 (2nd Dept., 1989). The plaintiffs and defendant, Yu, have failed to raise a triable issue of fact of permissive use.

Furthermore, the court finds that defendant, Young's summary judgment motion is not premature, as the plaintiffs and defendant, Yu failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively in the defendant's knowledge and control. See, *Batista v. Alvarez*, 225 A.D.3d 734, 207 N.Y.S.3d 150 (2nd Dept., 2024); *Walker v. City of Newburg*, 222 A.D.3d 809, 202 N.Y.S.3d 238 (2nd Dept., 2023); *Festaqallo v. Mandelbaum*, 213 A.D.3d 741, 184 N.Y.S.3d 81 (2nd Dept., 2023). The defendant has provided substantial evidence to rebut permissive use.

As to defendant, Yu's argument that the DMV documentary evidence submitted by defendant, Kareem Young are inadmissible, this court finds the argument unpersuasive. CPLR § 4518 states in part, that "any writing or record ... made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction,


occurrence or event, or within a reasonable time thereafter. All other circumstances of the making ... may be proved to affect its weight, but they shall not affect its admissibility. See, People v. Wray, 183 Misc.2d 444, 704 N.Y.S.2d 787 (2nd Dept., 2000). Where the certification seal is embossed, the DMV record is properly authenticated and admissible as prima facie evidence of the original record and fall under the exception to the hearsay rule. See, Dziekonski v. Uber Technologies, Inc., 83 Misc.3d 1227(A), 212 N.Y.S.3d 916 (Sup. Ct., Kings Co., 2024).

Accordingly, defendant, Kareem Young’s motion for leave to renew is hereby granted and it is hereby,

ORDERED that defendant, Kareem Young’s motion for summary judgment pursuant to CPLR 3212 on the issue of liability and dismissing plaintiffs’ complaint in its entirety with prejudice as it relates to Kareem Young is **GRANTED**.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York
December 3, 2024



HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

KINGS COUNTY CLERK
FILED
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