

Morban v EAN Holdings, LLC

2024 NY Slip Op 34979(U)

June 18, 2024

Supreme Court, Bronx County

Docket Number: Index No. 42018/2020E

Judge: John A Howard Algarin

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NEW YORK SUPREME COURT - COUNTY OF BRONX

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

Index No. 42018/2020E
Motion Sequence No. 4
Motion Date: July 31, 2023

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SARAH MORBAN,

DECISION/ ORDER

Present:

Plaintiff, **Hon. John A. Howard-Algarin**
Justice Supreme Court

-against-

EAN HOLDINGS, LLC and JAMES BONNEY,

Defendants.

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EAN HOLDINGS, LLC and JAMES BONNEY,

Third-Party Plaintiff,

-against-

CHRISTIAN GUZMAN, JUAN A. MUNOZ-BAEZ
and CHANCY MARSH,

Third-Party Defendants.

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion to dismiss plaintiff's complaint:

<u>Papers</u>	<u>NYSCEF Doc. No(s).</u>
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	67-76
Notice of Cross-Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	87-91
Affirmation(s) in Opposition, Counter-Statement of Material Facts, Exhibits Thereto	96
Reply Affirmation	98

In this multiple motor vehicle action, defendants/Third-Party Plaintiffs, EAN Holdings, LLC ("EAN Holdings"), and James Bonney ("Bonney", collectively "TP Plaintiffs") seek to dismiss plaintiff's complaint arguing that: (1) any action against EAN Holdings is pre-empted and barred by the Graves Amendment; and (2) Bonney does not bare any liability for the motor vehicle action at issue. Plaintiff cross-moves to amend the complaint to list Third-party Defendants, Christian Guzman ("Guzman"), Juan A. Munoz-Baez (Munoz-

Baez”), and Chancy Marsh (“March”, collectively “TP Defendants”) as direct defendants in the first-party action. Guzman opposes plaintiff’s cross-motion on the ground that the relief sought is barred by the statute of limitations. Plaintiff did not oppose TP Plaintiffs application.

A. Summary Judgment & The Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle will not be held vicariously liable for the negligent operation of that vehicle where the owner proves that it is engaged in the business of renting or leasing motor vehicles, and it was not otherwise negligent (*Casie v Wesner*, 165 AD3d 749 [2nd Dept 2018]).

In support of its motion for summary judgment based on the Graves Amendment, EAN submits evidence that: it was in the business of leasing/renting vehicles (NYSCEF Doc No 73); both Parsons and Bonney presented valid driver’s licenses upon renting the vehicle (NYSCEF Doc No 71); there were no operational difficulties or mechanical issues with the vehicle it rented (NYSCEF Doc No 69); the accident happened during the time of the rental (*id.*); there were no repairs done to the vehicle prior to the accident (*id.*); only two oil changes and a tire rotation were done to the vehicle pursuant to the manufacturer’s recommended service intervals (*id.*); there were no prior renter complaints regarding the mechanical condition of the vehicle (*id.*); Bonney’s father, James Parsons, rented the vehicle in question and Bonney was the driver (NYSCEF Doc No 72); neither Bonney nor his father were employed by EAN or any of its affiliates (*id.*); and, there are no allegations that EAN is independently liable for engaging in any criminal wrongdoing (NYSCEF Doc Nos 1, 41).

EAN Holdings has satisfied its burden that it is entitled to have plaintiff’s complaint dismissed based on the Graves Amendment. Plaintiff did not submit written opposition to the application. Indeed, plaintiff conceded that, “on the merits, [defendants’] motion is unopposable as a matter of law” (NYSCEF Doc No. 88, at ¶11). Accordingly, the portion of defendants’ motion seeking dismissal of all claims asserted against EAN Holdings’ herein is granted.

B. Summary Judgment & Liability

In support of his motion for summary judgment on the question of liability for the underlying vehicular accident, Bonney submits evidence in the form of an uncertified NYPD accident report and deposition transcripts, among other things, to establish both that plaintiff was a passenger in his stationary vehicle when it was rear-ended, and that he was in no way liable for the incident (NYSCEF Doc Nos 71, 72, 76). As with plaintiff’s response to the Graves Amendment portion of defendants’ motion, plaintiff has essentially conceded that there is no valid opposition to defendants’ liability citing to plaintiff’s testimony that the vehicle she was in was “rear-ended” while it was stopped (NYSCEF Doc No. 88, at ¶11). Hence, Bonney has satisfied his burden of showing entitlement to summary judgment and dismissal of plaintiff’s complaint for want of

liability (*see* VTL § 1129(a); *see also* *Santana v Danco Inc*, 115 AD3d 560 [1st Dept 2014]; *Santana v Tic-Tak Limo Corp*, 106 AD3d 572 [1st Dept 2013]). Significantly, no other party submitted written opposition to Bonney's liability application, which is granted, as a matter of law.

C. Leave to Amend The Pleadings.

Plaintiff cross-moves to amend her complaint to add TP Defendants as direct defendants in the first-party action. Guzman opposes plaintiff's cross-motion on the ground that the applicable three-year statute of limitations had already expired by the time he was served with the third-party complaint. From this Guzman claims that it would be prejudicial to add him as a direct defendant in plaintiff's first-party action. There is no merit to Guzman's argument.

Plaintiff's accident occurred on September 4, 2016 (NYSCEF Doc No 1), however, she did not commence her action until August 30, 2019. The third-party cause of action was commenced on February 24, 2020 (NYSCEF Doc No 8). Guzman interposed his answer to the third-party complaint on or about June 29, 2020 (NYSCEF Doc No 21). Pursuant to CPLR § 3025[b]:

A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

Critical here, as noted by plaintiff in her reply, in responding to the third-party complaint, Guzman failed either to include a statute of limitations defense among the eight affirmative defenses he asserted, or to make a pre-answer motion to dismiss grounded on the limitations period. Hence, that defense has been waived as a matter of law (*see* CPLR § 3211(e); *see also* *Horst v Brown*, 72 AD3d 434 [1st Dept 2010]), and leave to amend, as sought by way of plaintiff's cross-motion, is granted.

Accordingly, it is:

ORDERED that Defendant/Third-Party Plaintiffs EAN Holdings, LLC and James Bonney's motion for summary judgment based on the Graves Amendment is **GRANTED**, without opposition, and the Complaint is **DISMISSED** as against EAN HOLDINGS; it is further,

ORDERED that Defendant/Third-Party Plaintiffs EAN Holdings, LLC and James

Bonney's motion for summary judgment on the ground that they bear no liability for plaintiff's accident, is **GRANTED**, without opposition, and the Complaint is **DISMISSED** as against them; it is further,

ORDERED that plaintiff's motion to amend the complaint to add third-party defendants as direct defendants is **GRANTED**, and it is further,

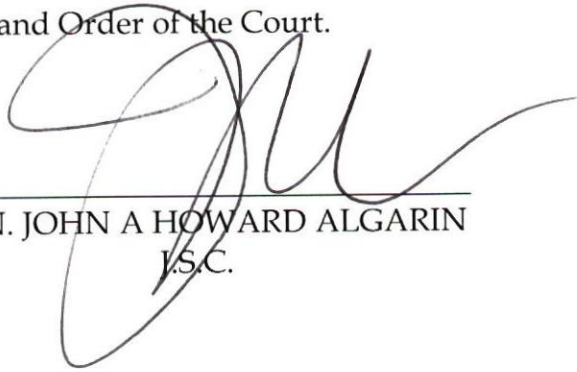
ORDERED that plaintiff is hereby directed to serve the amended summons and complaint on all named defendants within 20 days of this Order, and it is further,

ORDERED that Defendant/Third-Party Plaintiffs EAN Holdings, LLC and James Bonney shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order, and it is further,

ORDERED that a copy of this Order with notice of entry shall also be served upon the Clerk of the Motion Support Office, Room 217, who is hereby directed to mark this court's records to reflect the amendment.

The foregoing constitutes the Decision and Order of the Court.

Dated: June 18, 2024



HON. JOHN A HOWARD ALGARIN
J.S.C.