

Tokle v U-Haul Co. of N.Y. & Vt., Inc.
2024 NY Slip Op 35244(U)
June 18, 2024
Supreme Court, Westchester County
Docket Number: Index No. 62117/2021
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

-----X
STEPHANIE TOKLE,

Plaintiff(s)

DECISION AND ORDER

Index No. 62117/2021

Action #1

Motion Sequence No. 1

-against-

U-HAUL CO. OF NEW YORK AND VERMONT, INC.,
FAST FRESH FOOD & GAS, INC. and CECILIA LAGODKA
Defendant(s).

-----X
CECILIA LAGODKA,

Plaintiff(s)

Index No. 62400/2021

Action #2

Motion Sequence No. 1

-against-

U-HAUL CO. OF NEW YORK AND VERMONT, INC.,
and FAST FRESH FOOD & GAS, INC.,
d/b/a MOBIL ON WASHINGTON STREET,
Defendant(s).

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The following papers filed to the New York State Court Electronic Filing System (NYSCEF) were read and considered on the summary judgment motions filed by STEPHANIE TOKLE (Plaintiff in Action #1) and CECILIA LAGODKA (Plaintiff in Action #2).

Upon the foregoing papers, the motion is determined as follows:

This is an action seeking damages for the injuries sustained by plaintiff STEPHANIE TOKLE (“TOKLE”) when a rear wheel came off of her rental vehicle causing a one-vehicle collision which occurred at approximately 10:23 am on the morning of Wednesday, October 28, 2020 on the Taconic State Parkway in the Town of Yorktown. According to TOKLE, she was the front seat passenger in the host vehicle, a 2020 Chevrolet van rented from defendants U-Haul Co. of New York and Vermont, Inc. (“U-Haul”) and Fast Fresh Food & Gas, Inc. (“Fast Fresh”)(collectively “the Corporate Defendants”) and operated by defendant CECILIA LAGODKA (“LAGODKA”). While driving, a tire sensor warning indicator came on and LAGODKA pulled over onto the shoulder while

TOKLE called defendant U-Haul to report the problem. U-Haul's representative advised them to keep driving and find a gas station to fill the tire with air. Shortly after, while searching for a gas station, the rear driver's side tire fell off the host vehicle, causing the vehicle to crash into the guardrail and catch fire.

Motion filed by TOKLE (Plaintiff in Action #1):

TOKLE filed the instant motion for summary judgment pursuant to CPLR 3212 requesting a court order granting the following relief:

- (i) Awarding partial summary judgment on the issue of liability on the first cause of action against the defendants in accordance with CPLR 3212;
- (ii) Dismissing defendants U-Haul and Fast Fresh's first, third, fourth, fifth, seventh, ninth, tenth, and eleventh affirmative defenses in accordance with CPLR 3211(b);
- (iii) Dismissing defendant LAGODKA's first, second, third, fifth, seventh, eighth, and ninth affirmative defenses in accordance with CPLR 3211(b);
- (iv) Directing an immediate trial on the issue of plaintiff's damages, including the determination of the issue of plaintiff's establishment of a serious injury as that term is defined in Insurance Law § 5102(d), to be held following the conclusion of discovery and the filing of plaintiff's note of issue.

In support of TOKLE's motion, counsel submits, inter alia, plaintiff's sworn deposition testimony, LAGODKA's sworn deposition testimony, the certified police report, and vehicle damage photographs.

TOKLE contends that the motion record establishes that the corporate defendants failed in their duty to properly maintain, service, and inspect the host vehicle prior to renting it to TOKLE. When advised of a mechanical issue with the vehicle, the corporate defendant U-Haul's representative advised plaintiff to continue driving, leading to the collision that occurred shortly thereafter, TOKLE further contends that the eight of the corporate defendants' affirmative defenses, and seven of LAGODKA's affirmative defenses are without merit and should be promptly dismissed.

The Corporate Defendants filed opposition. Counsel contends that TOKLE's motion must be denied as premature. Counsel further contends that there are issues of fact precluding summary judgment. Specifically, it is alleged that the Corporate Defendants properly maintained the host vehicle, the driver's side front tire detached from the vehicle as a result of the accident (and not the rear driver's side tire prior to the accident as alleged by TOKLE). The Corporate Defendants also argue that they are not liable under the doctrine of *res ipsa loquitor* or the Graves Amendment. Counsel withdrew the Seventh Affirmative Defense asserting Plaintiffs lack of seat belt. Lastly, counsel argues that the arbitration agreement affirmative defenses remain enforceable.

Motion filed by CECILIA LAGODKA (Plaintiff in Action #2):

LAGODKA filed the instant motion for summary judgment pursuant to CPRL 3212 requesting a court order pursuant to CPLR § 3212: (1) granting plaintiff summary judgment on the issue of liability; (2) dismissing defendants' first, third, fifth, seventh, ninth, tenth and eleventh affirmative defenses; and (3) directing that the trial of this matter proceed solely on the issue of damages.

LAGODKA asserts the same factual account of the incident as did TOKLE – namely, that rear driver's side wheel and tire fell off of the van, resulting in the van hitting the center median guardrail and catching fire. LAGODKA also essentially asserts the same arguments as TOKLE in further of the dispositive motion. LAGODKA contends that the Corporate Defendants' negligence in failing to properly inspect, service and maintain the host vehicle caused the incident. LAGODKA also asserted that the Corporate Defendants' affirmative defenses lack merit and should be promptly dismissed.

The Corporate Defendants filed opposition asserting arguments consistent with those asserted against TOKLE. Counsel contends that LAGODKA's motion must be denied as premature. Counsel further contends that there are issues of fact precluding summary judgment. Specifically, it is alleged that the Corporate Defendants properly maintained the host vehicle, the driver's side front tire detached from the vehicle as a result of the accident (and not the rear driver's side tire prior to the accident as alleged by LAGODKA). The Corporate Defendants also argue that they are not liable under the doctrine of *res ipsa loquitor*, the Graves Amendment, breach of warranty. Counsel withdrew the Seventh Affirmative Defense asserting Plaintiffs lack of seat belt. Lastly, counsel argues that the arbitration agreement affirmative defenses remain enforceable.

All other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Decision:

It is well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d at 853). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see Zuckerman v City of New York*, 49 NY2d at 562). Summary judgment must be denied where there is conflicting testimony as to the happening of the accident (*Lee v Hossain*, 111 AD3d 799 [2d Dept. 2013]).

The dispositive motions filed by STEPHANIE TOKLE (Plaintiff in Action #1) and CECILIA LAGODKA (Plaintiff in Action #2) are premature insofar as depositions of the Corporate Defendants have not been held at the time of the motion filing. Defendants have not yet been deposed, and discovery has not been completed. Moreover, the parties have reported differing factual accounts of the occurrence, whether same was caused by the faulty tire (as alleged by Plaintiff) or whether same was caused by driver hitting the center median thus resulting in the tire being dismantled from the vehicle (as alleged by the Corporate Defendants). The motion record lacks any expert opinion as to the happening and cause of the incident for the Court to reach either conclusion as a matter of law at this juncture.

Based on the foregoing, it is hereby

ORDERED that, summary judgment motions filed by STEPHANIE TOKLE (Plaintiff in Action #1) and CECILIA LAGODKA (Plaintiff in Action #2) are **DENIED** for the reasons herein stated. It is further

ORDERED that, as stated in the Compliance Conference Order dated March 20, 2024 (NYSCEF Doc. 40), the Corporate Defendants' depositions shall be completed within 45 days hereof. Counsel shall promptly confer to designate the proper deponent(s) and select dates certain. It is further

ORDERED that, in light of the aforementioned determination, the virtual compliance conference scheduled for July 10, 2024 will be adjourned and rescheduled by the Judge's Part Clerk to report back to the Court after the Corporate Defendants' depositions have been completed.

The foregoing constitutes the Decision and Order of this Court.

Dated: June 18, 2024
White Plains, New York

E N T E R :



HON. THOMAS QUIÑONES, J.S.C.

TO: *Filed to NYSCEF*