Henry v Garcia

2025 NY Slip Op 33287(U)

August 4, 2025

Supreme Court, New York County

Docket Number: Index No. 161114/2015

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **01**

Justice

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ARLENE HENRY,

Plaintiff,

- v -

JORGE L NAVA GARCIA, ANNA VUKSANOVIC, 3151 BROADWAY LLC,CACO & SON REALTY CORP.

Defendant.

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INDEX NO. 161114/2015

MOTION DATE 07/24/2025

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 143

were read on this motion to/for RENEWAL.

Upon the foregoing documents, the motion of defendant Anna Vuksanovic (Vuksanovic) to renew is denied for the reasons set forth below. Vuksanovic moves for leave to renew this Court's Decision and Order dated December 23, 2019 (December 2019 Decision), on the issue of whether defendant Jorge L. Nava Garcia (Garcia) was operating his vehicle in his capacity as an employee of Vuksanovic at the time of the alleged accident. Upon renewal, Vuksanovic seeks an order granting her motion for summary judgment and dismissing the claims against her. Plaintiff Arlene Henry (Plaintiff) and Garcia oppose the motion.

I. Background

This action arises from a motor vehicle accident on August 3, 2015, when a vehicle owned and operated by Garcia struck Plaintiff, a pedestrian. It is undisputed that at the time of the accident, Garcia was employed as a superintendent for the building located at 3151 Broadway, New York, NY (the building) and his employer was Vuksanovic.

In its December 2019 Decision, the Court denied the motion of defendants Vuksanovic; 3151 Broadway, LLC; and Caco & Son Realty Corp seeking to dismiss the action as untimely. The Court held that the relation back doctrine applied to Garcia and Vuksanovic, because they are united in interest in this matter as Plaintiff's claims against them arise out of the same motor vehicle accident and the doctrine of respondeat superior may apply here. Stated otherwise, Vuksanovic, as employer, would be vicariously liable for negligence committed by Garcia, as an employee, while acting in the scope of his employment. Additionally, the Court denied summary judgment, holding that issues of fact exist as to "whether Garcia was within the scope of his employment with Vuksanovic at the time of the accident" (December 2019 Decision at 4).

II. Arguments

Vuksanovic argues that since the denial of her motion to dismiss, additional depositions were taken of Garcia, on April 8, 2024, and of Vuksanovic, on November 1, 2024, the testimony of which would change this Court's prior determination. Namely, Vuksanovic argues that the additional depositions clarify that Garcia was not acting within the scope of his employment at the time of the accident. Specifically, Vuksanovic contends that Garcia testified in his second deposition that the accident occurred when he was returning from errands at the grocery store and the hardware store with his pregnant wife and that he purchased a gasket for his toilet, using his own money, prior to the accident. Therefore, Vuksanovic argues that Garcia was engaged in personal activities unknown to and not authorized by Vuksanovic and that, as such, Vuksanovic cannot be held vicariously liable for the damages arising out of the accident at issue as a matter of law.

Plaintiff opposes, arguing that the second deposition of Garcia does not bring to light new facts not available on the previous motion. Plaintiff concedes that Garcia's testimony changed

between his first and second depositions. Indeed, Garcia testified at his first deposition that he had purchased the gasket for a tenant's apartment and that his work hours were from 8:00 a.m. to 5:00 p.m.; he testified at his second deposition that he was purchasing a gasket for his own apartment prior to the subject accident and that he was an on-call employee. Nevertheless, Plaintiff maintains that the facts underlying the Court's reasoning—that Garcia's job responsibilities included maintenance and repairs of the building and that he was working for Vuksanovic at the time of the subject accident—remain the same irrespective of these inconsistencies. As these facts were relied upon on in the December 2019 Decision, Plaintiff concludes that no new facts warrant reargument.

III. Discussion

A party may bring a motion to renew if "new facts not offered on the prior motion … would change the prior determination" or if "there has been a change in the law that would change the prior determination." CPLR 2221 (e) (2). When bringing a motion to renew based upon new facts, the movant must show "reasonable justification for the failure to present such facts on the prior motion." CPLR 2221 (e) (3). Further, "a motion to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew." *Venuti v Novelli*, 179 AD2d 477, 478 (1st Dept 1992). Renewal is meant to be "'granted sparingly,'" and the movant must show that the earlier lack of knowledge of the facts was not due to a lack of due diligence. *Perretta v New York City Tr. Auth.*, 230 AD3d 428, 432 (1st Dept 2024), quoting *Wade v Giacobbe*, 176 AD3d 641, 641 (1st Dept 2019).

The Court does not find that the additional depositions submitted by Vuksanovic constitute newly discovered evidence for the purposes of a motion to renew. The Court notes that Garcia's testimony at his second deposition did differ in some respects from his first deposition. Most notably, Garcia originally testified that, at the time of the accident, he was purchasing a gasket for

a tenant's apartment during his work hours, and he changed his testimony to state that he was purchasing a gasket for himself and that he did not have set work hours. However, these discrepancies do not constitute newly discovered evidence that would change the Court's prior decision, but, rather, create credibility issues that are appropriate for a jury to resolve.

Accordingly, it is

ORDERED that the motion of defendant Anna Vuksanovic to renew the Court's Decision and Order of December 23, 2019 is denied in its entirety; and it is further

ORDERED that all parties must appear for a Part 40 pre-trial settlement conference in Room 300 of 60 Centre Street, New York, NY 10007, on October 30, 2025, at 9:30 a.m.; and it is further

ORDERED that Plaintiff shall serve a copy of this Decision and Order upon all remaining parties, with Notice of Entry, within 30 days.

This constitutes the Decision and Order of the Court.

8/4/2025
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE