At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of SEPTEMBER, 2025

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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DENISE KEYS,

Plaintiff,

-against-

PV HOLDINGCORP., ZIPCAR NEWYORK, INC., ZIPCAR, INC., and STEVENJ. MALLORY,

Defendants,

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Index No.: 526646/2019
Decision and Order
Mot. Seq. No. 16

The following *papers NYSCEF* Doc #'s 389 to 416 read on this motion:

| Papers | *NYSCEF DOC NO.'s* |
|---|---|
| Notice of Motion/Order to Show Cause | |
| Affidavits (Affirmations) Annexed | 389-395 |
| Opposing Affidavits (Affirmations) | 402-413 |
| Reply Affidavits | 415-416 |

After having come before the Court and the court having heard Oral Argument on March 26, 2025 and after review of the foregoing papers the court finds as follows:

Defendants, PV HOLDING CORP., ZIPCAR NEW YORK, INC. and ZIPCAR, INC move for an order granting Summary Judgment and dismissing Plaintiff's amended complaint in its entirety with prejudice. Plaintiff opposes the same contending there are questions of fact precluding summary judgment.

Defendants contend they are immune from claims of vicarious liability because they are protected by the Graves Amendment pursuant to 49 U.S.C. §30106. Plaintiff contends that the graves amendment does not protect the defendants from claims of vicarious liability when there are allegations of negligence, as there are in this case.

This action arises from an automobile accident that occurred on November 11, 2019 at the intersection of Livingston Street and Flatbush Avenue in Brooklyn, New York. It is alleged Plaintiff was walking when the defendant's vehicle collided with the plaintiff while reversing causing plaintiff serious injuries.

## ANALYSIS

***Summary Judgment***

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.* The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact

and the right to judgment as a matter of law. (*Zuckerman v. City of New York,* 49 NY2nd 557 [1990].) Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v.Algaze,* 84 NY2d 1019 [1995] ). Where the moving papers are insufficient, there is no necessity for an opposing party to respond with evidentiary proof. *Fabbricatore v. Lindenhurst*, 259 AD2d 659 (2d Dept. 1999). When deciding a motion for summary judgment, the court must "view the evidence in the light most favorable to the plaintiff, as the nonmoving party, and afford him the benefit of every favorable inference. Moreover, a motion for summary judgement should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility," *Leblanc v. Skinner*, 103 AD3d 202, 211-12 (2 Dept. 2012).

**49 U.S.C. §30106 Graves Amendment**

The Graves Amendment provides; "(a) In general.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if— (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)" (49 USC § 30106 [a] [1], [2]). "The legislative history of the Graves Amendment indicates that it was intended to 'protect the vehicle rental and leasing industry against claims for vicarious liability where the leasing or rental company's only relation to the claim was

that it was the technical owner of the [vehicle]' " (*Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 893 [2015], *quoting Rein v CAB E. LLC*, 2009 WL 1748905, 2009 US Dist LEXIS 52617, [SD NY, No. 08 Civ 2899 (PAC)], *citing Statement of Representative Graves*, 151 Cong Rec H1034, H1200 [Mar. 9, 2005]).

In the present case defendants contend they are not a proper party to the action and are immune from claims of vicarious liability because they are protected by the Graves Amendment pursuant to 49 U.S.C. §30106. Defendants contend they are in the business of renting motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner. The defendant's fail to annex any evidence of any maintenance procedures or the condition of the car. Notably, the affidavits submitted by the defendant's reference records attached as Ex "A", however, there are no exhibits annexed to the affidavits and there are no records annexed to this motion for the court to review. (See NYSCEF doc no. 394 & 395). Moreover, even if the Graves Amendment does apply, which the defendants have not established, as among other things, they have failed to attach any proof that they are registered with the Secretary of State of New York as a business leasing cars, nor do they attach any proof that they are licensed to do so in the State of New York, it does not absolve an entity from its own negligence. Moreover, failure to attach all pleadings is grounds in and of itself to deny the motion before the court there are no pleadings attached to the motion.

The Lynch case stands for the proposition that for the Graves Amendment to apply the party, must establish "the accident occurred during the period of the rental or lease," as is required to obtain the protection of the Graves Amendment. *Lynch v. Baker*, 138 AD3d 695, 696–97, 30 NYS3d 126 (2d Dept. 2016) "An express element of

the Graves Amendment is the existence of a lessor-lessee relationship (49 USC § 30106 [a]; cf. *Cioffi v S.M. Foods, Inc.*, 129 AD3d at 892; *Davido v Salazar*, 89 AD3d at 463); *Lynch v. Baker*, 138 AD3d 695, 696–97, 30 NYS3d 126 (2d Dept. 2016). In the present case, although the defendants claim there is a lessee lessor relationship, it fails to attach the signed agreement for the leasing of the vehicle. In the present case the defendants have failed to make a prima facie showing of entitlement to judgment as a matter of law by demonstrating that it was an "owner (or an affiliate of the owner) . . . engaged in the trade or business of renting or leasing motor vehicles" (49 USC § 30106 [a] [1]).

Additionally, in the present case, there are allegations of negligence, specifically the plaintiffs' claims against defendants include negligent entrustment of the vehicle. (*see* 49 USC § 30106; *1024 *Graham v Dunkley*, 50 AD3d 55, 58 [2008]; *see also Graham v Dunkley*, 50 AD3d at 58). Rivera, J.P., Dillon, Florio and Balkin, JJ., concur; *see also Gluck v. Nebgen*, 72 AD3d 1023, 1023–24, 898 NYS2d 881 (2010). It is well settled that to state a claim for negligent entrustment, "the defendant must either have some special knowledge concerning a characteristic or condition peculiar to the person to whom a particular chattel is given which renders that person's use of the chattel unreasonably dangerous ... **or some special knowledge as to a characteristic** or defect peculiar to the chattel which renders it unreasonably dangerous." *Byrne v. Collins*, 77 AD3d 782, 784 (2d Dep't 2010) *quoting Cook v. Schapiro,* 58 AD3d 664, 666 (2d Dep't, 2009), *Zara v. Perzan*, 185 AD2d 236, 237 (2d Dep't, 1992).

"The tort of negligent entrustment is based on the degree of knowledge the supplier of a chattel has or should have concerning the entrustee's propensity to use the

chattel in an improper or dangerous fashion" (*Hamilton v. Beretta U.S.A. Corp.*, 96 NY2d 222, 237, 727 NYS2d 7, 750 NE2d 1055; *see Stanley v. Kelly*, 208 AD3d 993, 995, 173 NYS3d 750; *Perkins v. County of Tompkins*, 160 AD3d 1189, 1190, 74 NYS3d 648). "An owner of a motor vehicle may be liable for negligent entrustment if [they] were negligent in entrusting it to a person [they] knew, or in exercise of ordinary care should have known, was not competent to operate it" (*Kornfeld v. Chen Hua Zheng*, 185 AD3d 420, 420, 127 NYS3d 452; *see Perkins v. County of Tompkins*, 160 AD3d at 1190, 74 NYS3d 648; *Graham v. Jones*, 147 AD3d 1369, 1371, 46 NYS3d 329).

In the present case, Defendants Zipcar rent their vehicles not to the general public, but to "members" with whom defendants have an ongoing relationship and capacity to monitor the member's driving records when operating Zipcars. Here, it is undisputed Defendants had special knowledge that the member driver to whom they entrusted their vehicle had a prior accident in a Zipcar vehicle; incurred red light violations; incurred speeding tickets; allowed unauthorized persons to operate the vehicle; and was previously suspended as a "member", all within months leading up to the accident. Contrary to defendants contentions and the cases they cited, the present case is distinguishable because defendant had special knowledge of the prior accidents and violations by the member so much so that they had previous suspended their account. All of these create issues of fact for the jury as to whether or not the defendants negligently entrusted the vehicle to the lessor. *See Graham v. Jones*, 147 AD3d 1369, 1371.

Here, the defendant failed to establish prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging negligent entrustment. As

previously stated, Zipcar is not in the business of leasing to the general public, but to "members" where they have the capacity to monitor and maintain records regarding their "members" driving history, unlike general car leasing companies. Although, the possession of a driver license is a factor to be considered, the defendant nevertheless failed to eliminate triable issues of fact as to whether Zipcar had special knowledge concerning a characteristic or condition peculiar to the defendant which rendered his use of the rental car unreasonably dangerous *(see Maguire v. Upstate Auto, Inc.*, 182 AD3d 757, 758, 122 NYS3d 397; *Hull v. Pike Co.*, 174 AD3d 1092, 1094, 106 NYS3d 191; *Perkins v. County of Tompkin*s, 160 AD3d at 1192, 74 NYS3d 648; *Graham v. Jones*, 147 AD3d at 1371, 46 NYS3d 329; *Snyder v. Kramer*, 94 AD2d 860, 860, 463 NYS2d 591, affd, 61 NY2d 961, 475 NYS2d 279, 463 NE2d 620); *quoting, Shepard v. Power*, 219 AD3d 769, 772, 195 NYS3d 94, 97 (2023). In other words, the court finds that there is an issue of fact regarding whether the defendants should have entrusted the rental car to the driver defendant in the first instance (*see Perkins v. County of Tompkins,* 160 AD3d at 1191–1192, 74 NYS3d 648; *compare Monette v. Trummer,* 105 AD3d 1328, 1330–1331, 964 NYS2d 345 [2013], *affd* 22 NY3d 944, 976 NYS2d 696, 999 NE2d 174 [2013]). *see Graham v. Jones*, 147 AD3d at 1372, 46 NYS3d 329)

Accordingly, Defendants summary judgment motion is hereby denied for the reasons states above.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
September 18, 2025

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ