

**Jaffier v Durmaz**

2025 NY Slip Op 33960(U)

October 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 507553/2023

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 10<sup>th</sup> day of October 2025.

**P R E S E N T: HON. ANNE J. SWERN, J.S.C.**

JAMEL JAFFIER,

*Plaintiff,*

*-against-*

MUSA DURMAZ and MTLR CORP.,

*Defendants.*

**DECISION & ORDER**

Index No.: 507553/2023

Calendar Nos.: 21, 22, & 23

Motion Seq.: #2, #3, & #4

Return Date: 05/22/2025

*Recitation of the following papers as required by CPLR 2219 (a):*

**Papers  
Numbered**

**Motion Sequence 2**

Defendants MTLR CORP. and MUSA DURMAZ’S Notice of Motion, Affidavit/Affirmation in Support, Supporting Documents/Exhibits, Affidavit/Affidavit of Service..... NYSCEF Doc Nos. 22-34

Plaintiff JAMEL J. JAFFIER’S Affidavit/Affirmation in Opposition ..... NYSCEF Doc Nos. 35-36

Defendants MTLR CORP. and MUSA DURMAZ’S Affidavit/Affirmation in Reply, and Supporting Exhibits..... NYSCEF Doc Nos. 38-41

**Motion Sequence 3**

Defendants MUSA DURMAZ, MTLR CORP., A&A FOOD SERVICE, LLC, and A&A INDUSTRIES, LLC Notice of Motion, Affidavit/Affirmation in Support, Affidavit of Good Faith, and Supporting Exhibits ..... NYSCEF Doc Nos. 43-49

**Motion Sequence 4**

Plaintiff JAMEL J. JAFFIER’S Notice of Cross-Motion, Affidavit/Affirmation in Support of Cross-Motion, Supporting Exhibits, and Affidavit/Affidavit of Service ..... NYSCEF Doc Nos. 58-65

*Upon the foregoing papers, the decision and order of the Court is as follows:*

Motion Sequence 2 in this action by Defendants MTLR CORP. (“Defendant MTLR”) and MUSA DURMAZ (“Defendant Durmaz”) seeks an order pursuant to CPLR § 3212 and § 3211(a)(1) and (a)(7) granting both Defendants’ motion and dismissing Plaintiff JAMEL J. JAFFIER’S (“Plaintiff Jaffier”)

Complaint as against Defendant MTLR, and all counter claims and crossclaims against Defendant MTLR on the grounds that Plaintiff Jaffier's and Co-Defendants' claims are barred by federal statute 49 U.S.C.A. § 30106.

There are two related actions that stem from the same accident in Brooklyn, New York on October 28, 2021. Action #1 commenced by Plaintiff Jaffier, the driver/owner of a Nissan, against Defendants MTLR and Durmaz, alleges that Defendant Durmaz (who was operating a box truck owned by Defendant MTLR) struck his vehicle. And Action #2 commenced by Plaintiff Dominique Pridgen (the passenger in Plaintiff Jaffier's Nissan, owned by Co-Defendant Margo Prime) against Defendants Durmaz, MTLR, Prime, and Jaffier (as a Defendant) for personal injuries. Both actions were joined for trial and discovery in February 2024.

In Motion Sequence 2, Defendants MTLR and Durmaz argue that claims are barred by the Graves Amendment (49 U.S.C. § 30106), which preempts New York's vicarious liability statute (VTL § 388); that Defendant MTLR merely leased the truck to A&A Food Service LLC and had no role in its operation, control, or maintenance at the time of the accident; and that no allegations exist that Defendant MTLR acted negligently, performed improper maintenance, or that mechanical failure caused the accident. According to the lease agreement, the truck was leased to A&A Food Service LLC, which assumed insurance and indemnification obligations in favor of MTLR (NYSCEF Doc No. 32). According to Kerri Peritore's affidavit, the Licensing Manager for Defendant MTLR, Defendant Durmaz was not an employee/agent of Defendant MTLR; Defendant MTLR was solely in the business of leasing trucks (NYSCEF Doc No. 33); and the Graves Amendment shields Defendant MTLR absent negligence or criminal conduct. Furthermore, the police report confirms truck ownership and registration detail (NYSCEF Doc No. 31).

A CPLR § 3211(a)(7) motion requires the complaint to state a viable legal theory; conclusory or contradicted allegations are insufficient. Documentary evidence may be considered if incorporated by reference. According to *Caldeira v EAN Holdings, LLC*, 240 AD3d 654, 655 [2d Dept 2025]:

In order to establish that it is protected under the Graves Amendment against vicarious liability for personal injuries resulting from the use of a vehicle during the period of the rental, an owner of a motor vehicle, which rents that vehicle to another, must show that the owner: (1) 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 (internal quotations omitted).

Essentially, the Graves Amendment is a federal law that prevents vicarious liability for rental and leasing companies in accidents caused by their customers, unless the owner itself was negligent or committed criminal wrongdoing. Plaintiff Jaffier's complaints allege negligence only in the operation/control of the truck, not the maintenance or other conduct by Defendant MTLR. Thus, Defendants MTLR and Durmaz assert that no cognizable claim exists.

In opposition, Plaintiff Jaffier asserts that his Complaint specifically pled negligent entrustment against Defendant MTLR, and that both Defendants offered only an affidavit from a licensing manager not personally involved in leasing the truck, without producing evidence such as driver's license checks, leasing employee testimony, or company procedures. The Graves Amendment does not bar negligent maintenance claims. Moreover, Plaintiff Jaffier highlights contradictions: the affidavit claimed no issues as of October 28, 2021, but the lease agreement showed that the truck was leased in 2020, with Defendant MTLR responsible for maintaining the mounted truck body. Lastly, Plaintiff asserts that questions exist as to whether Defendant Durmaz was competent/licensed, whether others might have operated the truck, and

whether Defendant MTLR adequately maintained the vehicle, with Plaintiff Jaffier highlighting that depositions are needed to resolve such issues before summary judgment can be considered.<sup>1</sup>

Motion Sequence 3 in this action by Defendants Durmaz and MTLR and Defendants A&A Food Service LLC (“Defendant A&A Service”) and A&A Industries, LLC (“Defendant A&A Industries”) moves for an order pursuant to CPLR § 602, consolidating the above-entitled action with the action of *Jamel J Jaffier v A&A Food Service, LLC and A&A Industries, LLC*, pending in the Supreme Court, Kings County, under Index No. 524085/2024, for a true consolidation. Defendants argue that consolidation is proper under CPLR § 602 because the suits stem from the same occurrence and involves identical questions of law and fact.

Motion Sequenced 4 is by Plaintiff Jaffier for an order pursuant to CPLR § 602, consolidating the above-entitled action with the action of *Jamel J. Jaffier v A&A Food Service, LLC and A&A Industries, LLC*, pending in the Supreme Court of the State of New York, County of Kings, under Index No. 524085/2024, for a true consolidation; and pursuant to CPLR § 2004 granting Plaintiff additional time to file its Note of Issue in the instant case, arguing that discovery is incomplete and no party would be prejudiced. Plaintiff Jaffier supports consolidating his two actions: one against Defendants Durmaz and MTLR, and the other against Defendants A&A Food Service and A&A Industries, since both arise from the same accident on October 28, 2021. Consolidation, Plaintiff Jaffier contends, will conserve resources, avoid inconsistent rulings, and serve judicial economy.

Upon review of the parties’ submissions and oral argument, the Court determines as follows. Both the present *Jaffier* action and the related *Pridgen* action arise from the same accident on October 28, 2021. In *Pridgen*, this Court previously denied dismissal under the Graves Amendment at this stage, finding that questions of fact existed as to whether Defendant MTLR retained certain maintenance obligations under the lease, whether it adequately discharged those obligations, and whether the vehicle was properly entrusted and operated by a competent, duly licensed driver. The Court finds that the same factual questions remain here. Although the Graves Amendment preempts purely vicarious liability claims against vehicle leasing companies that are free of negligence or criminal wrongdoing, dismissal at this stage is inappropriate where claims of negligent entrustment and negligent maintenance have been asserted, and discovery is ongoing. To ensure consistency with *Pridgen* and because discovery has not yet resolved these issues, the motion seeking dismissal of the vicarious liability claims is denied at this time. The issue may be revisited on a more complete record after discovery.

Motion Sequence 3, by Defendants Durmaz, MTLR, A&A Food Service LLC, and A&A Industries LLC, seeking consolidation of the instant matter with *Jaffier v A&A Food Service LLC and A&A Industries LLC* (Index No. 524085/2024), is granted. Both actions arise from the same accident on October 28, 2021 and involve common questions of law and fact; consolidation will conserve judicial resources and avoid inconsistent rulings without prejudice to any party. Likewise, Motion Sequence 4, Plaintiff Jaffier’s cross-motion, seeking consolidation and requesting an extension of time to file the Note of Issue, is granted. For the reasons set forth above, consolidation of the related actions is proper. In addition, good cause has been shown under CPLR § 2004 to extend the note of issue deadline, as discovery remains incomplete and no prejudice to any party has been demonstrated.

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<sup>1</sup> In Reply to Plaintiff Jaffier’s opposition, both Defendants assert that Plaintiff Jaffier has already filed a second lawsuit directly against A&A Food Service LLC (the lessee) and plans to consolidate it, emphasizes that Defendant MTLR was not responsible for the truck’s maintenance, and points to the police accident report showing no summons was issued to Defendant Durmaz for unlicensed driving, arguing that this defeats any negligent entrustment claim.

Accordingly, it is hereby

ORDERED that Motion Sequence 2 by Defendants MTLR and Durmaz for an order dismissing the vicarious liability, negligent entrustment, and negligent maintenance claims under the Graves Amendment at this stage of the proceedings is DENIED, without prejudice and with leave to renew upon the completion of discovery, and it is further

ORDERED that Motion Sequences 3 and 4, seeking consolidation of Index Numbers 507553/2023 and 524085/2024, are GRANTED, and it is further

ORDERED that the Clerk of Kings County is directed to consolidate the file of Index Number 524085/2024 into this action bearing Index Number 507553/2023, and it is further

ORDERED that the pleadings in each action shall stand as the pleadings in the consolidated action, and it is further

ORDERED that upon service of a copy of this Order with Notice of Entry in NYSCEF, the Clerk of Kings County shall amend the caption of this action to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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JAMEL JAFFIER,

*Plaintiff,*

*-against-*

Index # 507553/2023

MUSA DURMAZ, MTLR CORP., A&A FOOD  
SERVICE, LLC and A&A INDUSTRIES, LLC,

*Defendants.*

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and it is further

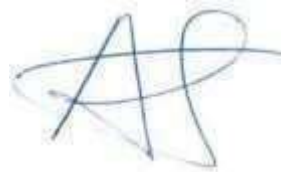
ORDERED that the branch of Motion Sequence #4 for an order extending Plaintiff Jaffier's time to file the Note of Issue is GRANTED, and it is further

ORDERED that parties shall prepare a proposed Order with a discovery schedule and a new Note of Issue date for submission to the Central Compliance Part/Final Compliance Part, together with a copy of this Order in accordance with the Discovery Part Rules for CCP/FCP.

This constitutes the decision and order of the Court.

For Clerks use only: MG _____ MD _____ Motion seq. # _____
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ENTER:




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**Hon. Anne J. Swern, J.S.C.**  
**Dated: 10/10/2025**