

**Nasimov v Bryan**

2025 NY Slip Op 34152(U)

October 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 524174/2021

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 524174/2021  
Motion Date: 10-14-25  
Mot. Seq. Nos.: # 5 and # 7

-----X  
UTKUR NASIMOV,

Plaintiff,

-against-

**DECISION/ORDER**

HAROLD BRYAN, PV HOLDING CORP., and AVIS  
BUDGET GROUP, INC.,

Defendants.

-----X

The following papers, which are e-filed with NYCEF as items , were read on this motion:

In this action to recover damages for personal injuries that the plaintiff, UTKUR NASIMOV, allegedly suffered in a motor vehicle accident, in Motion Seq. # 5, defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC. move for an Order pursuant to CPLR §2221(a) for resetting, clarifying and modifying this Court's March 13, 2023 Order which granted summary judgment in favor of Plaintiff on the issue of liability, an Order pursuant to CPLR §3211(a)(7) and 3211(a)(1), dismissing Plaintiff's claims against Defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC., for failure to state a cause of action and based on documentary evidence; or, in the alternative, and Order pursuant to CPLR §3212(a) granting leave to file a motion for summary judgment for good cause, and granting summary judgment in favor of Defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC., pursuant to the Graves Amendment (49 U.S.C. §30106), dismissing Plaintiff's claims against said Defendants.

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In Motion Seq. # 7, Plaintiff UTKUR NASIMOV cross-moves for an Order: (1) disqualifying defense counsel, Brand Glick & Brand, P.C., from the joint representation of defendants HAROLD BRYAN, PV HOLDING CORP., and AVIS BUDGET GROUP, INC., on the grounds that a conflict of interest exists pursuant to Rule 1.7 of the Rules of Professional Conduct (22 N.Y.C.R.R. 1200).

The motions are consolidated for disposition.

### **Background**

In this action to recover damages for personal injuries that the plaintiff, UTKUR NASIMOV, allegedly suffered in a motor vehicle accident, in Motion Sequence No. defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC. move for an Order pursuant to CPLR §2221(a) for resetting, clarifying, and modifying this Court's March 13, 2023, Order, which granted summary judgment in favor of the Plaintiff on the issue of liability. Alternatively, they seek an Order pursuant to CPLR §3211(a)(7) and 3211(a)(1), dismissing Plaintiff's claims against them for failure to state a cause of action and based on documentary evidence. As a further alternative, they seek an Order pursuant to CPLR §3212(a) granting leave to file a motion for summary judgment for good cause, and granting summary judgment in their favor pursuant to the Graves Amendment (49 U.S.C. §30106), dismissing Plaintiff's claims against them.

In Motion Sequence No. 7, Plaintiff UTKUR NASIMOV cross-moves for an Order: (1) disqualifying defense counsel, Brand Glick & Brand, P.C., from the joint representation of defendants HAROLD BRYAN, PV HOLDING CORP., and AVIS BUDGET GROUP, INC., on the grounds that a conflict of interest exists pursuant to Rule 1.7 of the Rules of Professional Conduct (22 N.Y.C.R.R. 1200).

The motions are consolidated for disposition.

## DISCUSSION

Motion Sequence No. 5:

That branch of Motion Sequence No. 5 in which defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC. seek an Order for resetting, clarifying, and modifying this Court's March 13, 2023, Order is GRANTED. The Order is clarified and modified to reflect that the March 13, 2023, Order only granted summary judgment in the Plaintiff's favor on the issues of whether defendant HAROLD BRYAN was negligent and whether his negligence was a proximate cause of the accident and on the issue of whether the affirmative defenses of culpable conduct, comparative negligence, assumption of risk, and failure to wear a seatbelt should be stricken. The Order did NOT determine the applicability of the Graves Amendment (49 U.S.C. §30106) or award summary judgment against defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC.

That branch of Motion Sequence No. 5 in which the moving defendants seek an order granting them leave to file a motion for summary judgment for good cause, and, if leave is granted, for summary judgment in their favor dismissing the action insofar as asserted against them pursuant to the Graves Amendment (49 U.S.C. §30106) is DENIED. The moving defendants did not demonstrate good cause for leave to make a late motion for summary judgment.

That branch of Motion Sequence No. 5 in which defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC. seek an order pursuant to CPLR §3211(a)(7) dismissing Plaintiff's claims against them for failure to state a cause of action is DENIED. Plaintiff's verified complaint clearly states a claim against the moving defendants based on the allegation that they are vicariously liable for Mr. Bryan's negligence. Contrary to the moving defendants' contention, the Plaintiff was not obligated to allege facts negating the moving defendants' alleged immunity from liability under the Graves Amendment. Such immunity has traditionally been treated by the Courts as an affirmative defense, not as part of the Plaintiff's *prima facie* case, regardless of whether the moving defendants pleaded such immunity in their answer (*see Ventura v. Lubman*, 217 A.D.3d 616, 617, 192 N.Y.S.3d 92, 93; *Keys v. PV Holding Corp.*, 205

*A.D.3d 787, 788, 165 N.Y.S.3d 881*). The moving defendants bear the burden of proof on this affirmative defense (*see Island ADC, Inc. v. Baldassano Architectural Group, P.C.*, *49 A.D.3d 815, 854 N.Y.S.2d 230*).

That branch of Motion Sequence No. 5 in which defendants PV HOLDING CORP. and AVIS BUDGET GROUP, INC. seek an order pursuant to CPLR §3211(a)(1) dismissing Plaintiff's claims against them based on documentary evidence is DENIED. In support of their motion to dismiss pursuant to CPLR §3211(a)(1), the moving defendants submitted, among other things, the affidavit of Jeanie Motosko and the rental agreement between defendant Bryan and Budget Rent A Car System, Inc. The rental agreement does not include any of the moving defendants as parties. The plaintiff maintains, however, that the affidavit of Ms. Motosko explains the relationship between Budget Rent A Car System, Inc. and that the two documents combined establish the moving defendants' immunity under the Graves Amendment.

A motion pursuant to CPLR §3211(a)(1) to dismiss the complaint on the ground that the action is barred by documentary evidence "may be granted only where the documentary evidence utterly refutes the plaintiff's allegations, thereby conclusively establishing a defense as a matter of law" (*Kurtaj v. Borax Paper Prods., Inc.*, *231 A.D.3d 939, 940, 221 N.Y.S.3d 151 [internal quotation marks omitted]*; *see Goshen v. Mutual Life Ins. Co.*, *98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190*). "If the evidence submitted in support of the motion is not 'documentary,' the motion must be denied" (*Phillips v. Taco Bell Corp.*, *152 A.D.3d at 806, 60 N.Y.S.3d 67, quoting CPLR 3211[a][1]*; *see Kurtaj v. Borax Paper Prods., Inc.*, *231 A.D.3d at 940, 221 N.Y.S.3d 151*). "To constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable" (*Yan Ping Xu v. Van Zwiennen*, *212 A.D.3d 872, 874, 183 N.Y.S.3d 475 [citations and internal quotation marks omitted]*). "Conversely, letters, emails, and . . . affidavits, do not meet the requirements for documentary evidence. An affidavit is not documentary evidence because its contents can be controverted by other evidence, such as another affidavit" (*Phillips v. Taco Bell Corp.*, *152 A.D.3d 806, 807, 60 N.Y.S.3d 67 [citations omitted]*). Since Ms. Motosko's affidavit does not constitute documentary evidence, and without

it, the moving defendants cannot conclusively establish the elements of the immunity provided by the Graves Amendment, the motion must be DENIED.

Motion Sequence No. 7:

Turning to Plaintiff's motion to disqualify defendants' counsel, since the Plaintiff is neither a present nor former client of defense counsel, Plaintiff lacks standing to make the motion (*A.F.C. Enterprises, Inc. v. New York City School Constr. Auth.*, 33 AD3d 736 (2d Dep't 2006)). Furthermore, Plaintiff waived any objection by waiting nearly four years, until the eve of trial, to raise the issue (*Helé Asset, LLC v. SEE Realty Assoc.*, 106 AD3d 692 (2d Dep't 2013)). The motion is therefore DENIED.

Accordingly, it is hereby

**ORDERED** that Motion Sequence No. 5 and Motion Sequence No. 7 are decided as indicated above.

This constitutes the Decision and Order of the Court.

**FILED**

Dated: October 23, 2025

**OCT 24 2025**

**KINGS COUNTY CLERK'S OFFICE**

**PPS**

**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020