

Nelson-Cashman v Pascazi
2025 NY Slip Op 35541(U)
May 27, 2025
Supreme Court, Westchester County
Docket Number: Index No. 57034/2024
Judge: Alexandra D. Murphy
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To commence the statutory time period 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
PRESENT: HON. ALEXANDRA D. MURPHY, J.S.C.**

----- X
MARILYN NELSON-CASHMAN,

Plaintiff,

Index No. 57034/2024

– against –

Motion Seq. 3 & 4

MARK R. PASCAZI; PENSKE TRUCK LEASING CORPORATION; PENSKE TRUCK LEASING CO., L.P.; PENSKE TRUCK LEASING CO., L.P. d/b/a PENSKE TRUCK RENTAL; LAUSH TRUCKING LLC; and ALEKSANDA CVIJOVIC¹,

Defendants.

DECISION & ORDER

----- X
In this action to recover damages for personal injuries as a result of a motor vehicle accident, (1) the defendants Penske Truck Leasing Corporation, Penske Truck Leasing Co., L.P., and Penske Truck Leasing Co., L.P. d/b/a Penske Truck Rental, move for summary judgment against the plaintiff (Motion Seq. 3), and (2) the defendants Laush Trucking LLC and Aleksanda Cvijovic, move for summary judgment against the plaintiff (Motion Seq. 4), both pursuant to CPLR 3212:

Papers Considered

NYSCEF Doc. Nos. 49-58, 62-69

1. Notice of Motion/Memorandum of Law in Support/Statement of Material Facts/Exhibits A-G;
2. Notice of Motion/Affirmation of Aleksandar Cvijovic/Affirmation of Srdjan Milenkovic, Esq.;
3. Affirmation of Marilyn Nelson-Cashman, Esq. in Opposition/Exhibits 1-2;
4. Affirmation of Marilyn Nelson-Cashman, Esq. in Opposition;
5. Reply Affirmation of Srdjan Milenkovic, Esq.

¹ This Court notes that the caption refers to the defendant as "Aleksanda Cvijovic." However, the defendant's papers in connection with the instant motions refer to the defendant as "Aleksandar Cvijovic." For purposes of the instant Decision and Order, the Court will reference the defendant as he is referenced in the caption.

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Discussion

The plaintiff commenced this action for personal injuries as a result of a motor vehicle accident that occurred on February 11, 2021, at the intersection of White Plains Road and Mill Road in Eastchester, New York.

The defendants Penske Truck Leasing Corporation, Penske Truck Leasing Co., L.P., and Penske Truck Leasing Co., L.P. d/b/a Penske Truck Rental (Penske) move for summary judgment (Motion Seq. 3). In support of their motion, Penske asserts that it is not a proper defendant to the action based upon the Graves Amendment. In support of their motion, Penske asserts that at the time of the accident, the subject vehicle was leased to a company, Splash Transportation Inc., and that the driver involved in the accident was not acting on behalf of Penske. As such, Penske asserts that they cannot be held vicariously liable for the negligent operation of the vehicle. Penske further asserts that the inspection, which was completed before turning over the vehicle, did not demonstrate any mechanical issues with the vehicle, and as such, the plaintiff's claims for negligent maintenance must be dismissed.

The plaintiff, who is an attorney proceeding pro se, opposes Penske's motion, and asserts that, inter alia, the affidavit submitted on behalf of Penske is defunct because the employee does not have personal knowledge. The plaintiff further asserts that the affidavit and supporting documents are inadmissible due to lack of proper authentication or certification of records. The plaintiff further asserts that Penske has failed to establish a prima facie entitlement to summary judgment, pursuant to the Graves Amendment.

Separately, the defendants Aleksanda Cvijovic (Cvijovic) and Laush Trucking LLC (Laush) move for summary judgment (Motion Seq. 4). In support of the motion, Cvijovic submits an affirmation stating that he is the sole owner of Laush and owns one truck. He asserts that he did not let anyone use his truck on the date of the incident and that no evidence has been submitted to demonstrate his connection to the accident.

The plaintiff opposes Cvijovic's and Laush's motion, but appears to submit incomplete opposition, which fails to address the substance of the motion (NYSCEF Doc. No. 68)².

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]).

² The plaintiff appears to have filed amended opposition papers (NYSCEF Doc. Nos. 70-75), two days after the moving defendant filed reply papers, stating that the plaintiff's opposition was incomplete (NYSCEF Doc. No. 60). As the filing of such papers by the plaintiff was untimely and filed absent express permission of this Court, said papers are not taken into consideration in the instant Decision and Order (NYSCEF Doc. No. 79).

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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 the *prima facie* showing has been made, “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” (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see *Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat a *prima facie* showing of entitlement to summary judgment (see *Zuckerman v New York*, 49 NY2d at 562).

“The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist” (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; see *Dykeman v Heht*, 52 AD3d 767, 768 [2d Dept 2008]). Further, in deciding a motion for summary judgment, the court is “required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion” (*Yelder v Walters*, 64 AD3d 762, 767 [2d Dept 2009]; *Nicklas v Tedlen Realty Corp.*, 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue of fact (*Alvarez v Prospect Hospital*, 68 NY2d at 324).

Motion Seq. 3

With respect to Penske's motion for summary judgment, the defendant has met its *prima facie* entitlement to summary judgment. The plaintiff asserts claims against Penske of negligent ownership, operation, maintenance, and control of the truck involved in the accident. Penske's moving papers include an affirmation from Jamie Perfetto, a litigation claims examiner for Penske, who affirms that as of the date of the accident the vehicle was leased to Splash and that the vehicle was in working condition with no mechanical issues. Penske further submits a copy of the lease agreement and inspection reports. The documents submitted by Penske establish that a lease for the vehicle was in effect on the date of the accident and that there were no known mechanical issues with the vehicle.

With respect to the plaintiff's claims against Penske for vicarious liability, this Court finds that pursuant to the Graves Amendment, Penske cannot be held liable (*Graham v Dunkley*, 50AD3d 55, 62 [2d Dept 2008]). Moreover, Penske has demonstrated their absence of negligence in connection with the accident. In opposition, the plaintiff failed to raise a triable issue of fact (see *Batashvili v Veliz-Palacios*, 170 AD3d 791, 792 [2d Dept 2019]; *Cheow v Cheng Lin Jin*, 121 AD3d 1058 [2d Dept 2014]).

Motion Seq. 4

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With respect to Cvijovic's motion, the defendant has not met its *prima facie* entitlement to summary judgment. In support of his motion, Cvijovic submits an affirmation merely asserting that he has never permitted anyone to use his truck. Although this Court notes that the record is devoid of information as to the involvement of Cvijovic's vehicle at this early stage in the litigation, before depositions have been conducted, Cvijovic has failed to submit sufficient evidentiary proof to demonstrate that he was not involved.

Cvijovic's counsel's affirmation in support (NYSCEF Doc. No. 64) references a "statement" made by Cvijovic, which has been deemed a pro se answer (NYSCEF Doc. No. 19). In said statement, Cvijovic refers to proof that he was not in New York at the time of the accident. However, Cvijovic has failed to submit such proof. The lack of evidence coupled with Cvijovic's conclusory assertions in his affirmation are insufficient to eliminate all issues of fact warranting a denial of his motion for summary judgment.

In light of the foregoing, the Court need not address the defendant's opposition papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] ["The proponent of a summary judgment motion 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. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers"]).

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

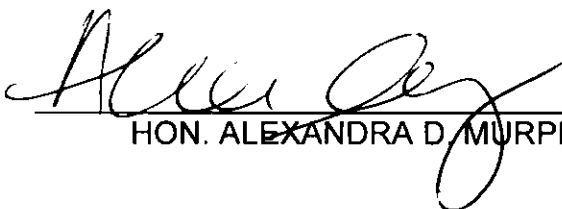
Accordingly, it is

ORDERED that the defendants Penske Truck Leasing Corporation, Penske Truck Leasing Co., L.P., and Penske Truck Leasing Co., L.P. d/b/a Penske Truck Rental's motion for summary judgment (Motion Seq. 3) is **GRANTED** and all cross claims against said defendants are dismissed; and it is further

ORDERED that the defendants Laush Trucking LLC and Aleksanda Cvijovic's motion for summary judgment (Motion Seq. 4) is **DENIED**; and it is further

ORDERED that counsel for all parties shall appear for a virtual Compliance Conference on **August 5, 2025, at 10:30 a.m.** as previously scheduled.

Dated: White Plains, New York
May 27, 2025


HON. ALEXANDRA D. MURPHY, J.S.C.