

Cintron v PV Holding Corp.

2026 NY Slip Op 31329(U)

March 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 504059/2021

Judge: Richard J. Montelione

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At IAS Part 99 of the Supreme Court of the State of New York, Kings County, on the 27th day of March 2026

PRESENT: HON. RICHARD J. MONTELIONE, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: PART 99

-----X
JAMES CINTRON and. YANIRA FELICIANO,

Plaintiffs,
-against-

PV HOLDING CORP., and RANAY WILSON,

Defendants.
-----X

DECISION AND ORDER

Index No.: 504059/2021
Mot. Seq. 5-7

CAL # 7, 8, 9

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	Numbered
Summons and Complaint.....	1
First Amended Summons and Complaint.....	34-35
Defendant Ranay Wilson’s Notice of Motion for Summary Judgment (MS #5) Pursuant to CPLR 3212 on the issue of liability/Affirmation in Support affirmed by Kieran Frail, Esq./Exhibits A-G.....	75-83
Plaintiffs’ Affirmation in Opposition affirmed by Marc Gertler, Esq. Of Counsel/Exhibits A-B	106-108
Defendant PV Holding Corp.’s Affirmation in Partial Opposition affirmed by Stephen F. Zaklukiewicz, Esq.	128
Reply Affirmation affirmed by Kieran Frail, Esq.....	131
Defendant PV Holding Corp.’s Notice of Motion for Summary Judgment (MS #6) Pursuant to CPLR 3212/Affirmation in Support affirmed by Stephen F. Zaklukiewicz, Esq. /Exhibits A-M.....	84-98
Plaintiffs’ Affirmation in Opposition affirmed by Marc Gertler, Esq. Of Counsel/Exhibits A-B.....	109-11
Reply Affirmations.....	129-130
Other.....	

MONTELIONE, RICHARD J., J.S.C.

This action was commenced on or about February 19, 2021, by plaintiffs James Cintron and Yanira Feliciano (Plaintiffs) against defendants PV Holding Corp. and John Doe to recover damages for personal injuries and property damage arising out of a motor vehicle accident that occurred on July 10, 2020. Defendant PV Holding Corp. (PV Holding) served a verified answer

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on or about April 1, 2021. Defendant Ranay Wilson (Wilson) was added as a defendant pursuant to a motion to amend granted on May 25, 2022, and served a verified answer on or about August 3, 2022.

In Motion Seq. #7, plaintiffs Cintron and Feliciano move, pursuant to CPLR 3025, for an order granting them leave to amend the pleadings to add John Doe as an additional operator of the vehicle bearing registration number HZX7461, State of New York, alongside defendant Wilson as the operator of that vehicle, deeming the Amended Summons and Complaint served nunc pro tunc on all appearing defendants, and granting such other and further relief as the Court deems just, proper, and equitable.

In Motion Seq. #5, defendant Wilson moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all counterclaims and crossclaims as against her on the ground that she was not negligent and was not the operator of the vehicle involved in the accident, together with such other and further relief as the Court deems just and proper.

In Motion Seq. #6, defendant PV Holding moves, pursuant to CPLR 3212, for summary judgment dismissing all claims and crossclaims against it on the grounds that it is shielded from vicarious liability under the Graves Amendment, 49 USC § 30106, and that there is no evidence of active negligence, including negligent maintenance, on its part, together with such other and further relief as the Court deems just and proper. The motions are consolidated for disposition.

Background

Plaintiffs allege that on July 20, 2020, at approximately 4:50 p.m., at the intersection of Brooklyn Avenue and Lefferts Avenue in Kings County, New York, the vehicle owned by defendant PV Holding struck plaintiffs' vehicle. (NYSCEF Doc #35, ¶ 3). Plaintiffs further allege that as a result of the accident they sustained serious injuries as defined by New York State Insurance Law § 5102. Specifically, in his verified bill of particulars and supplemental bill of particulars, plaintiff James Cintron alleges various injuries to his left shoulder, cervical spine and lumbar spine, a left shoulder surgery and left shoulder injection, depression, headaches, anxiety, fear and emotional upset. (NYSCEF Doc. #93). Plaintiff Yanira Feliciano alleges injuries to her lumbar spine, cervical spine, thoracic spine, and a surgery to her lumbar spine.¹ *Id.* Finally, both plaintiffs allege a claim under the 90/180-day category of serious injury. *Id.*

At the time Plaintiffs commenced this action, the operator of the vehicle was named as defendant John Doe. (NYSCEF Doc. #1). Thereafter, plaintiffs moved to the amend the

¹ Plaintiff withdrew the following injuries: depression, headaches, anxiety, fear, and emotional upset and shock. (NYSCEF Doc. # 93, Supplemental Bill of Particulars).

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pleadings to name defendant Wilson as the lessee and operator of the vehicle owned by PV Holding at the time of the accident. (NYSCEF Doc. #35, ¶¶5-6).

On August 23, 2024, Plaintiff filed the Note of Issue with trial by jury demanded. (NYSCEF Doc. #74). On October 21, 2024, both defendants filed their respective motions for summary judgment (NYSCEF Doc. #s 75, 84). On December 16, 2024, plaintiffs filed the instant motion to amend the pleadings to add a “John Doe” as a defendant and as the operator of the vehicle at the time of the accident. (NYSCEF Doc. #102, ¶¶6-7, 9).

Discussion

Motion Seq. #7

Plaintiffs move under CPLR 3025(b) for leave to amend the pleadings to add John Doe as the operator of the Ford Explorer, the vehicle involved in the subject accident, and to deem the amended pleadings served nunc pro tunc.

CPLR 3025(b) permits a party to amend its pleading “by leave of court” and provides that “leave shall be freely given upon such terms as may be just.” However, “whether to grant or deny leave to amend is subject to the discretion of the trial court” (*Lennon v 56th and Park (NY) Owner, LLC*, 199 AD3d 64, 72 [2d Dept 2021], citing *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]). “[A] court may consider the timeliness or untimeliness of the motion for leave to amend, how long the party seeking the amendment was aware of the facts upon which the motion was predicated, whether a reasonable excuse was offered for any such delay, prior notice to the opposing party of the subject matter of the amendment, and any other relevant factor. *Id.*

It is the burden of the party opposing the amendment to show prejudice or surprise, or “that a proposed amendment is palpably insufficient or patently devoid of merit” (*Sainpllice v Tuizer*, 244 AD3d 774, 775 [2d Dept 2025]). However, “[d]elay alone is insufficient to bar an amendment to the pleading; it must be lateness coupled with significant prejudice to the other side”. *Sainpllice*, at 775. “No evidentiary showing of merit is required under CPLR 3025 (b)” (*Fernandez v Feoktistov*, 240 AD3d 575, 575 [2d Dept 2025]).

Moreover, where, as here, the application for leave to amend is made well after the Note of Issue has been filed certifying the action for trial, “judicial discretion in allowing such amendments should be discrete, circumspect, prudent, and cautious...the court’s discretion under such circumstances will not be lightly disturbed.” (*Morris v Queens Long Is. Med. Group, P.C.*, 49 AD3d 827, 828 [2d Dept 2008]; see also *Morand v Farmers New Century Insurance Company*, 171 AD3d 1167, 1167 [2d Dept 2019]).

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Here, it has been nearly two years since plaintiff filed the note of issue. Moreover, it appears that plaintiffs were on notice as early as April 12, 2022, when Wilson submitted an affidavit in opposition to plaintiffs' first motion to amend (NYSCEF Doc. #25), that Wilson denied operating the vehicle at the time of the accident; this denial was reiterated at her deposition on October 20, 2023, yet plaintiffs did not move to add John Doe until December 2024, after the note of issue was filed in August 2024 and after defendants' summary judgment motions were interposed in October 2024.

Notwithstanding the near two-year gap between plaintiffs filing of the note of issue and filing the instant motion for leave to amend, this alone is not a sufficient basis to demonstrate prejudice (*see A&M Wallboard, Inc. v Marina Towers Associates*, 125 AD2d 354, 355 [2d Dept 1986] [Holding that plaintiffs' four (4) year delay in seeking amendment on the eve of trial is insufficient to show legal prejudice]).

On these facts, the Court in its discretion, will grant plaintiffs leave to amend the complaint to name "John Doe" as the operator of the Ford Explorer involved in the accident, and inasmuch as the second amended complaint now supersedes the first amended complaint, the Court will strike the Note of Issue. *See* NYCRR 202.21(e). However, the court declines to grant the amendment *nunc pro tunc* as the court will not speculate as to whether the defendants' prior answers and amended answers would be modified (*see Seidler v Knopf*, 186 AD3d 886, 888 [2d Dept 2020] ["When an amended complaint has been served, it supersedes the original complaint and becomes the only complaint in the case," and the defendants' "original answer has no effect and a new responsive pleading must be substituted for the original answer" [internal citations omitted]).

The motion for summary judgment by defendant Wilson (MS #5) is denied without prejudice to renew upon filing of an amended answer.

The court notes that PV Holding relies on the rental lease agreement and affidavit of Jeanne Motosko, Regional Insurance Risk Manager for Avis Budget Car Rental, LLC (NYSCEF Doc. #s 94 & 96). However, this affidavit fails to meet PV Holding's prima facie burden, in that Jeanne Motosko fails to properly authenticate the lease agreement and fails to properly establish that it should be admitted under the business record exception to the hearsay rule. *See* CPLR 4518. Defendant PV Holding's motion for summary judgment pursuant to the Graves Amendment, 49 USC § 30106 (MS #6) is denied without prejudice to renew after amended answers have been filed.

For the foregoing reasons, it is hereby

ORDERED, that Motion Seq. #7 by plaintiffs James Cintron and Yanira Feliciano, for leave pursuant to CPLR 3025 to amend the pleadings to add John Doe as the operator of the vehicle bearing registration number HZX7461, State of New York, alongside defendant Ranay

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Wilson as the lessee, and to deem the Amended Summons and Complaint served *nunc pro tunc* on all appearing defendants, is GRANTED TO THE EXTENT that plaintiffs may file and serve an amended complaint. The branch of the motion to deem the amended summons and complaint served *nunc pro tunc* is DENIED; and it is further

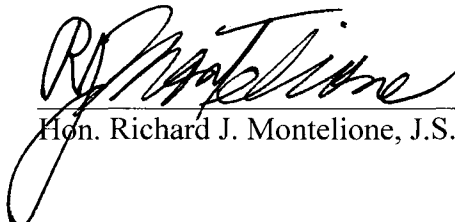
ORDERED, that Motion Seq. #5 by defendant Ranay Wilson, for summary judgment on liability pursuant to CPLR 3212 dismissing the complaint and all counterclaims and crossclaims as against her, is DENIED without prejudice to renew after filing an answer to the amended complaint; and it is further

ORDERED, that Motion Seq. #6 by defendant PV Holding Corp., for summary judgment pursuant to CPLR 3212 dismissing the complaint and all crossclaims as against it on the grounds of the Graves Amendment and the absence of negligence, is DENIED without prejudice to renew after filing of an answer to the amended complaint; and it is further

ORDERED, that all other request for reliefs herein are denied.

This constitutes the decision and order of the Court.

ENTER



Hon. Richard J. Montelione, J.S.C.

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KINGS COUNTY CLERK
FILED