

Hinds v Efficiency Enters., Inc.

2019 NY Slip Op 35129(U)

January 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 30306/2017E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
HINDS, RONALD, et ano.

Index No. **30306/2017E**

- against -

Hon. **JOHN R. HIGGITT,**

EFFICIENCY ENTERPRISES, INC., et ano.
-----X

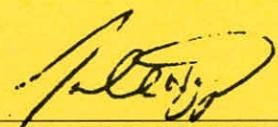
A.J.S.C.

The following papers numbered 17 to 24, 30 to 43, 45 to 46 and 50 to 56 in the NYSCEF System read on this motion for **SUMMARY JUDGMENT (DEFENDANT)**, noticed on **June 22, 2018** and duly submitted as No. 32 on the Motion Calendar of **September 25, 2018**.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	17-24
Notice of Cross-Motion – Exhibits and Affidavits Annexed	30-43
Answering Affidavit and Exhibits	46
Replying Affidavit and Exhibits	50-56
Filed Papers	
Memoranda of Law	
Stipulations	45

Upon the foregoing papers, the motion of defendant Efficiency Enterprises, Inc. for summary judgment is granted, and the plaintiffs’ cross motion to amend the pleadings is denied, in accordance with the annexed decision and order.

Dated: 1/7/2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
RONALD HINDS and SHARLENE HINDS,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 30306/2017E

EFFICIENCY ENTERPRISES, INC. and PEDRO J.
MEDINA,

Defendants.

-----X

John R. Higgitt, J.

This negligence action arises out of a motor vehicle accident that occurred on November 10, 2014. At that time defendant Pedro J. Medina, in the course of his employment with Empire Merchants, LLC (Empire), was driving the vehicle owned by defendant Efficiency Enterprises, Inc. (Efficiency). Defendant Efficiency seeks summary judgment under the Graves Amendment (49 USC § 30106). Plaintiffs cross-move to amend the complaint to add Empire as a defendant. For the reasons that follow, defendant Efficiency’s motion for summary judgment is granted and plaintiffs’ cross motion for leave to amend the complaint is denied.

Under the Graves Amendment, the owner of a leased or rented motor vehicle is not vicariously liable for personal injuries sustained as a result of an accident involving a leased or rented vehicle (*see Jones v Bill*, 10 NY3d 550, 554 [2008]). To establish summary judgment under the Graves Amendment, the owner of the leased or rented vehicle must show that: (1) the movant is in the business of leasing or renting motor vehicles; (2) the movant owned the subject vehicle; (3) the movant leased or rented the subject vehicle to a third party; and (4) the resulting accident was not caused by negligent maintenance on the owner’s part (*see Villa-Capellan v Mendoza*, 135 AD3d 555, 556 [1st Dept 2016]; *Cassidy v DCFS Trust*, 89 AD3d 591, 591 [1st Dept 2011]).

Defendant Efficiency satisfied its prima facie burden of establishing its entitlement to judgment as a matter of law under the Graves Amendment. Defendant Efficiency submitted a copy of the pleadings, the rental agreement, the vehicle maintenance history, and the affidavit of Jeremy Karamel, defendant Efficiency's vice-president. In his affidavit, Karamel averred that Efficiency is in the business of renting and leasing vehicles and that the subject vehicle was leased to Empire at the time of the accident. Karamel further averred that a search of the vehicle's maintenance history records demonstrates that the vehicle had no malfunctions when it was leased by Empire, and that no issues were brought to Efficiency's attention in regard to any repairs needed. Thus, defendant Efficiency provided sufficient evidence in admissible form to establish its entitlement to judgment as a matter of law (*see* CPLR 3212[b]).

In opposition, plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Plaintiffs argue that defendant Efficiency's motion should be denied because that defendant maintained full control of any needed repairs. However, the lease agreement stated that notification to Efficiency of the need for repair rested solely with Empire, and, as above, Efficiency demonstrated that it was not notified of the need for any repair.

Plaintiffs further argue that the motion should be denied as premature, as discovery should be conducted as to the vehicle maintenance records. The mere hope that a party might be able to uncover some evidence during the discovery process, however, is insufficient to deny summary judgment (*see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]).

In regard to plaintiffs' cross motion, leave to amend a pleading should be granted freely unless the amendment is patently meritless, prejudicial to the opposing party or both; and a

movant must include any proposed amendment or supplemental pleading with the motion (*see* CPLR 3025[b]; *see also Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]). Failure to include the proposed or supplemental pleadings warrants denial of the motion (*see Muro-Light v Farley*, 95 AD3d 846 [2nd Dept 2012]). Here, plaintiffs failed to include a proposed amendment or supplemental pleading with their cross motion. Thus, their motion is denied.

Accordingly, it is

ORDERED, that the motion of defendant Efficiency Enterprises, Inc. for summary judgment is granted, and the complaint as against it and all cross claims against it are dismissed; and its further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Efficiency Enterprises, Inc. dismissing the complaint as against it and all cross claims against it; and its further

ORDERED, that plaintiffs' cross motion for leave to amend the summons and complaint and the caption is denied.

This constitutes the decision and order of the court.

Dated: January 7, 2019



John R. Higgitt, A.J.S.C.