

New York City

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Plaintiff v. Construction Equipment Leasing Firm, et al.

Partner Barry Gerstman and the Haworth Barber & Gerstman, LLC (HBG) team in New York obtained summary judgment for the firm's client, a construction equipment leasing firm, in a vehicular wrongful death case. The case involved a plaintiff who, while using a man lift to hang Christmas lights on trees on Columbus Avenue in Manhattan, he was struck by a tractor trailer driving south and thrown from the bucket of the manlift. He died shortly thereafter. Mr. Gerstman moved for summary judgment in favor of his client on multiple grounds including that it could not be held liable for negligent entrustment, that it was not vicariously liable for the actions of the lift operator and that it was shielded from liability based on the Graves Amendment. The Court, using much of the language and case law cited in HBG's motion, found:

- HBG's client expressly conditioned the lessee's use of the boom lift on proper training and PPE being provided to the operator of the machine.
- HBG's client established that it did not direct the decedent to operate the lift by submitting, among other things, the rental agreement pursuant to which the lessee agreed that "the lessor has no control over the way the Equipment is operated during the Rental Period by [Creative]"
- HBG's client demonstrated its prima facie entitlement to judgment as a matter of law dismissing the negligent entrustment claim through the affidavit of a former employee who affirmed that they had leased similar telescoping boom lifts to the lessee on several prior occasions and during these prior rentals HBG's client was not made aware and received no complaints from any source that the lessee was using the equipment in an improper or unsafe manner or that it was not complying with the terms of the rental agreement. The Court found that In opposition to HBG's prima facie showing, plaintiff and the other defendants opposing the motion failed to raise a triable issue of fact as to whether HBG's client possessed special knowledge concerning a characteristic or condition peculiar to the lessee that rendered its use of the boom lift unreasonably dangerous.
- As to vicarious liability under VTL § 388 as the lift owner, the Court found that the statute does not apply because the boom lift has multiple functions and was not functioning as a vehicle at the time of the accident.
- The Court also held that, even assuming the boom lift was a motor vehicle under VTL § 388, the Graves Amendment would shield HBG's client from liability as a renter of the vehicle with no evidence of negligent maintenance having caused the accident.

The case remains pending against the building owner and the tractor trailer driver and owner and the decision has been appealed to the Appellate Division, First Department.