Portnova v Toyota Motor Credit Corp.
2013 NY Slip Op 34054(U)
March 15, 2013
Supreme Court, Queens County
Docket Number: 14875/12
Judge: Valerie Brathwaite Nelson

113 056
140

ORIGINAL
OS

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **VALERIE BRATHWAITE NELSON** IA TERM, PART 7
Justice

----------x

BLORIA PORTNOVA, an infant by her mother and natural guardian ALLA PORTNOVA,

Plaintiff,

-- against --

TOYOTA MOTOR CREDIT CORPORATION, et al.,

Defendants.

----------x

Index No.: 14875/12

Motion: 12/5/12

Motion Seq. No.:

Cal. No.: 94

2013 MAR 20 AM 11:18
QUEENS COUNTY CLERK
FILED

The following papers numbered 1 to 12 read on this motion by defendant Toyota Motor Credit Corporation ("TMCC") for an order pursuant to CPLR 3211(a)(7) dismissing the plaintiff's complaint and all cross-claims in its favor on the grounds that the pleadings fail to state a cause of action and severing the dismissed action as against TMCC from the remaining action.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 7
Answering Affidavits - Exhibits.....	8 - 9
Reply Affidavits - Exhibits.....	10 - 12

Upon the foregoing papers, it is ordered the motion is determined as follows:

This is an action by plaintiff seeking damages for personal injuries allegedly sustained in a multi vehicle accident occurring on June 27, 2012. Plaintiff, a passenger in a vehicle owned and operated by Boris Aronov, alleges that she was injured when Mr. Aronov's vehicle came in contact with a vehicle owned by TMCC, leased by Mario Rodriguez and operated by Sara Rodriguez.

Defendant, TMCC, moves for an order pursuant to CPLR

§3211(A)(7) claiming that it cannot be held vicariously liable for the negligent acts of Sara Rodriguez while operating a car it owns. Under New York Law, an owner of a vehicle is vicariously liable for negligence in its use (VTL §388). However, 49 U.S.C. §30106, commonly known as the "Graves Amendment," abolished vicarious liability of long-term automobile lessors based solely on ownership and is applicable to any action commenced on or after the date of enactment, August 10, 2005. The constitutionality of this federal statute has been upheld in New York State as a valid exercise of Congressional power pursuant to the Commerce Clause inasmuch as a rational basis exists for the conclusion that the Graves Amendment's regulation of rented or leased motor vehicle safety and responsibility has a substantial effect on interstate commerce (Graham v Dunkley, 50 AD3d 55,[2008]. 852 N.Y.S.2d 169 [2008]). The constitutionally of the statute has also been upheld in Merchants Insurance Group v Mitsubishi Motor Credit Association, 525 F. Supp.2d 309 [2007]; Seymour v Penske Truck Leasing Co., L.P., Slip Copy WL 2212609 [S.D. Ga 2007] 407CV015 and Garcia v Vanguard Car Rental USA, Inc., 510 F.Supp.2d 821 [2007]).

On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), the court must determine whether from the four corners of the pleading "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (Morad v Morad, 27 AD3d 626, 627 [2006]; see EBCI, Inc. v Goldman Sachs & Co., 5 NY3d 11 [2005]; Goshen v Mutual Life Ins. Co. of New York, 98 NY2d 314 [2002]; Holmes v Gary Goldberg & Co., Inc., 40 AD3d 1033 [2007]; 83-17 Broadway Corp. v Debcon Financial Services, Inc., 39 AD3d 585 [2007]; McKenzie v Meridian Capital Group, LLC, 35 AD3d 676 [2005]). The pleading is to be afforded a liberal construction, the facts alleged in the complaint accepted as true, and the plaintiff accorded the benefit of every possible favorable inference (see Leon v Martinez, 84 NY2d 83 [1994]). Nevertheless, "bare legal conclusion and factual claims which are flatly contradicted by the record are not presumed to be true" (Parola, Gross & Marino, P.C. v Susskind, 43 AD3d 1020, 1021-1022 [2007] citing Morone v Morone, 50 NY2d 481[1980]; Kupersminth Winged Foot Golf Club, Inc., 38 AD3d 847[2007]; Meyer v.Guinta, 262 AD2d 463[1999]).

The pleadings, affidavit of Dion Bryce-Wells, certificate of title for the vehicle operated by Sara Rodriguez, lease agreement between Mario Rodriguez and Toyota of Manhattan and Notice to Admit/Response to Notice to Admit are submitted in support of the

within motion[1].

The motion is opposed only by the plaintiff. Plaintiff argues that the TMCC failed to establish that it is entitled to the protections afforded by the Graves Amendment. More particularly, plaintiff argues that TMCC is not in the business of renting or leasing vehicles inasmuch as it merely accepted an assignment of the lease and did not actually lease the vehicle in question to Mario Rodriguez. However, the Court finds no merit in this argument (see, Gluck v Nebgen, 72 AD3d 1023 [2010]). Ms. Bryce-Wells, a lease collecting agent employed by TMCC is charged with reviewing customer files and supervising accounts for vehicles leased by the moving defendant and therefore may properly testify as to the documents and business practices of TMCC. Furthermore, Ms. Bryce-Wells' testimony with respect to the nature of TMCC's business and its relationship with the Mario Rodriguez is supported by the lease agreement submitted and the Response to Notice to Admit.[2]

Additionally, plaintiff argues that TMCC is not immune from liability under the Graves Amendment when it negligently entrusts its vehicle to another. In a viable cause for negligent entrustment "the defendant must either have some special knowledge concerning a characteristic of condition peculiar to the [person to whom a particular chattel is given] which renders [that person's] use of the chattel unreasonably dangerous . . . or some special knowledge as to a characteristic or defect peculiar to the chattel which renders it unreasonably dangerous." (Cook v Schapiro, 58 AD3d 664, 666 [2009] *quoting* Zara v Perzan, 185 AD2d 236, 237 [1992]; see also, Weinstein v Cohen, 179 AD2d 806 [1992]). It therefore follows that plaintiff was required to plead that TMCC had reason to know that Mario Rodriguez and/or Sara Rodriguez were likely to use its vehicle in an unsafe manner or that TMCC had knowledge that the vehicle in question possessed a defect which rendered its use unreasonably dangerous. However, the complaint herein makes no such allegations.

Finally, plaintiff argues that the Graves Amendment does not prevent the imposition of liability against a lessor who fails to maintain its vehicle. However, dismissal pursuant to CPLR 3211(a)(7) will be granted upon a showing that the lessor did not

---

[1] Robert Rodriguez' Response to Notice to Admit establishes that the relationship between him and the movant/owner of the vehicle driven by Sara Rodriguez was that of lessor and lessee.

[2] The lease agreement contains a provision by which Toyota of Manhattan assigns its rights in the leased vehicle to TMCC.

engage in the repair and maintenance of its vehicles and that such responsibility belonged solely to the lessee (Kahn v MMCA Lease, Ltd., 100 AD3d 833,834 [2012] citing Guggenheimer v Ginzburg, 43 NY2d at 275; Gluck v Nebgen, 72 AD3d at 1023). The evidence submitted herein establishes that the subject vehicle was maintained solely by the lessee, Mario Rodriguez.

Accordingly, the motion by defendant Toyota Motor Credit Corporation is granted pursuant to CPLR 3211(a)(7) to the extent that the complaint and all cross claims are dismissed as against Toyota Motor Credit Corporation.

The motion is denied in all other respects.

Dated: 3/15/13

.....
VALERIE BRATHWAITE NELSON, J.S.C.

QUEENS COUNTY CLERK
FILED
2013 MAR 20 AM 11: 18

QUEENS COUNTY CLERK
FILED
2013 MAR 20 AM 11: 18

QUEENS COUNTY CLERK
FILED
2013 MAR 20 AM 11: 18