

**Ophir v Webb**

2013 NY Slip Op 30587(U)

March 22, 2013

Supreme Court, New York County

Docket Number: 103268/2011

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 22

Index Number : 103268/2011  
OPHIR, MEIRA  
vs.  
WEBB, ALYUALDIR  
SEQUENCE NUMBER : 003  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 3, were read on this motion to/for SJ dismissing cplt. against Auto Sport  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 2  
Replying Affidavits \_\_\_\_\_ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH  
ACCOMPANIED BY DECISION/ORDER  
**FILED**

MAR 27 2013

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 3/22/13

Arlene P. Bluth, J.S.C.  
HON. ARLENE P. BLUTH

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NY  
COUNTY OF NEW YORK: PART 22

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Index No.: 103268/11  
Motion Seq. 03

Meira Ophir,

*Plaintiff,*

*-against-*

Alyualdir Webb, Auto Sport of Newark and The  
Port Authority of New York and New Jersey,

*Defendants.*

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**DECISION/ORDER**

HON. ARLENE P. BLUTH, JSC

**FILED**

MAR 27 2013

NEW YORK  
COUNTY CLERK'S OFFICE

Defendant Auto Sport of Newark Corp.'s (sued herein as Auto Sport of Newark) motion for summary judgment dismissing the complaint and any cross-claims against it on the grounds that it was not the owner of the vehicle that allegedly struck the plaintiff's vehicle is granted, and the complaint and any cross-claims are dismissed against this defendant. The balance of the case<sup>1</sup> shall continue.

In deciding the motion, the court must draw all reasonable inferences in favor of the non-moving party and must not decide credibility issues. (*Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 562 NYS2d 89 [1st Dept 1990], *lv. denied* 77 NY2d 939, 569 NYS2d 612 [1991]). As summary judgment is a drastic remedy which deprives a party of being heard, it should not be granted where there is any doubt as to the existence of a triable issue of fact (*Chemical Bank v West 95th Street Development Corp.*, 161 AD2d 218, 554 NYS2d 604 [1st Dept 1990]), or where the issue is even arguable or debatable (*Stone v Goodson*, 8 NY2d 8, 200 NYS2d 627 [1960]).

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<sup>1</sup>By stipulation dated 9/20/11, this action was discontinued as against the Port Authority. By order dated 2/15/12 the Court granted plaintiff's motion for summary judgment on liability as against Webb.

\* 3]

In order to establish a *prima facie* case of liability against defendant, plaintiff is required to establish that defendant owned or operated the offending vehicle. *See Miller v Bah*, 74 AD2d 761, 902 NYS2d 174 (2d Dept 2010), *lv denied* 15 NY3d 712, 912 NYS2d 577 (2010). In her verified bill of particulars, plaintiff stated that on March 18, 2010 she was injured when a vehicle owned by Auto Sport and operated by Webb collided with a vehicle in which she was a passenger. Auto Sport claims that it was not the owner of Webb's car on the day the accident occurred, that it sold the car to Webb more than one month earlier and as such this action must be dismissed as against it.

In support, Auto Sport submits the affidavit of its president, Arthur Loureiro (exh J to moving papers) who states that on February 12, 2010 Webb purchased the vehicle involved in the subject accident from Auto Sport, a New Jersey corporation. Webb took possession of the vehicle on February 13, 2010; however, the administrative transfer of title did not occur until March 29, 2010 as reflected by the certificate of title (exh K).

Auto Sport asserts New Jersey law should be applied to determine who owned the vehicle on the date of the accident, and that pursuant to New Jersey law, Webb was the owner of the vehicle on that date. Plaintiff concedes that pursuant to New Jersey law Auto Sport did not own the vehicle on the date of the accident because New Jersey recognizes the transfer of title of a motor vehicle on the date of sale (*aff. in opp.*, para. 3). Here, plaintiff argues that New York law, which states that title is not transferred until proper documentation is filed with the Department of Motor Vehicles, should apply.

The issue of transfer of ownership upon the sale of a vehicle is a contract issue, not a tort issue. In *In re Liquidation of Midland Ins. Co.*, 16NY3d 536, 923 NYS2d 396 [2011], the Court

of Appeals stated that courts must apply the “center of gravity” or “grouping of contacts” inquiry to determine which state has the most significant contacts to a contract dispute. In determining which state’s laws apply to a transaction, “[f]actors to consider are the places of the contracting, negotiations and performance of the contract, the location of the subject matter of the contract, and the domicile or place of business of the parties.” *Equis Corp. v Mack-Cali Realty Corp.*, 6 AD3d 264, 775 NYS2d 35 (1<sup>st</sup> Dept 2004). Here, it is undisputed that the contracting, negotiation/payment of the contract of sale and delivery of the vehicle to Webb, a New Jersey resident, took place at Auto Sport’s place of business in Newark, New Jersey. Additionally, the vehicle was located on Auto Sport’s New Jersey lot throughout the transaction, and the certificate of title for the vehicle was issued by New Jersey’s Motor Vehicle Commission.

Plaintiff’s argument that New York law should apply to determine who owned the vehicle on the date of the accident simply because the motor vehicle accident occurred in New York is unavailing. In *Elson v Defren*, 283 AD2d 109, 115, 726 NYS2d 407 (1<sup>st</sup> Dept 2001), the Appellate Division, First Department stated:

In weighing the various interests, New York courts distinguish between “conduct regulating” and “loss allocating” rules. “An immediate distinction was drawn between laws that regulate primary conduct (such as standards of care) and those that allocate losses after the tort occurs (such as vicarious liability rules).” (*Cooney v Osgood Mach.*, supra, 81 NY2d at 72.) If conduct regulating rules conflict, New York courts usually apply the law of the place where the tort occurred because that jurisdiction has the greatest interest in regulating behavior that takes place within its borders. (*Id.* at 74.) If loss allocating rules conflict, the three so-called Neumeier rules adopted in *Neumeier v Kuehner* (31 NY2d 121) govern the choice of law analysis. The issue here, i.e., which state’s vicarious liability principle controls, involves loss allocation (citation omitted).

The issue involved in this case involves loss allocation as well. Clearly, New Jersey corporations selling goods in New Jersey to New Jersey customers have a right to rely on their own laws to determine finality of ownership. As such, this Court, applying New Jersey law which recognizes

the transfer of title of a motor vehicle on the date of sale (February 12, 2010), finds that Webb, not Auto Sport, was not the owner of the subject vehicle on March 18, 2010, the date of the accident.

Accordingly, it is hereby

ORDERED that defendant Auto Sport of Newark Corp.'s (sued herein as Auto Sport of Newark) motion for summary judgment dismissing the complaint and any cross-claims against it on the grounds that it was not the owner of the vehicle that allegedly struck the plaintiff's vehicle is GRANTED, and the complaint and any cross-claims are dismissed against this defendant.

This is the Decision and Order of the Court.

**Dated: March 22, 2013**  
**New York, New York**



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HON. ARLENE P. BLUTH, JSC

**FILED**  
MAR 27 2013  
NEW YORK  
COUNTY CLERK'S OFFICE