[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____ PART _____

Justice

Index Number : 111344/2010
COLEMAN, ROBERT B.
vs.
VEHICLE ASSET UNIVERSAL
SEQUENCE NUMBER : 005
DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). 3

Sur-reply 4

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

[illegible] IN ACCORDANCE WITH
[illegible] ACCOMPANYING DECISION/ORDER

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

Dated: 5/24/13

_____, J.S.C.
ARLENE P. BLUTH
J.S.C.

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

Index No.:111344/10
Motion Seq 05

Robert B. Coleman and Tamara Coleman,

Plaintiffs,

-against-

Vehicle Asset Universal Leasing Trust, Leona Johnson, Noman Hacking Corp, Gujar Cab Corp. and Mohammad I. Ahsan,

Defendants.

DECISION/ORDER

HON. ARLENE P. BLUTH, JSC

Defendant Vehicle Asset Universal Leasing Trust's (VAULT's) motion to dismiss this action against it based upon the Graves Amendment is denied.

The Graves Amendment prohibits the imposition of vicarious liability on vehicle lessors for injuries resulting from the negligent use or operation of the leased vehicle *(Tirado v Elrac,* 2008 NY Slip Op 6506 [1st Dept]) and applies to actions commenced on or after August 10, 2005 (see 49 USC §30106[c]; *Hernandez v Sanchez*, 2007 NY Slip Op 4361 [1st Dept]). The statute provides that "an owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing of the part of the owner (or an affiliate of the owner)" (49 USC §30106).

Therefore, "[i]n order to claim immunity to vicarious liability under the Graves

Amendment, the owner of the subject vehicle must be 'engaged in the trade or business of renting or leasing motor vehicles'; the subject vehicle must have been 'rent[ed] or lease[d] . . . to a person'; and 'harm to persons or property' must have occurred 'during the period of the rental or lease'" (*Luma v Elrac*, 2008 NY Slip Op 51062[U] [Sup Ct, Kings County]). Of course, because owners of cars in New York are vicariously liable for the acts of their drivers, the lease relationship is a key element to be protected by the Graves Amendment.

Material issues of fact exist

Because owners of cars in New York are vicariously liable for the acts of their drivers, the key to being protected by the Graves Amendment is proof of the movant's status with respect to a lease or financing relationship. Here, Vault admits that it owned the car on the date of the accident; that simple fact would make it vicariously liable under New York law.

In its moving papers, defendant VAULT submits the affidavit of Lee Coblentz, a Claims Manager in VAULT's offices. He states that the car was leased by Ms. Johnson on January 12, 2008; he does not say that VAULT leased the car to her. He annexes as exhibit E a Certificate of Title dated January 17, 2008 showing VAULT owned or bought the car on that date (which is five days *after* she signed the lease with Green Brook Pontiac); he does not say that VAULT owned the car on the date she signed the lease with Green Brook Pontiac.

Curiously, Mr. Coblentz states "There is no other relationship between Leona Johnson and [VAULT} oterh [sic - should be "other"] than the lease agreement." (Coblentz affidavit, paragraph 4). What lease agreement? The only lease agreement annexed to the moving papers is a barely legible document annexed as exhibit C and Green Brook [illegible] in Michigan is the

lessor and the lessee is Ms. Johnson in New Jersey. There is no lease agreement between VAULT and Johnson submitted.

In her deposition, plaintiff testified that, as far as she knew, the owner of the car was Green Brook Pontiac and that she never heard of VAULT. In opposition to the motion, plaintiff's attorney correctly points out that the moving papers fail to show the connection or relationship between VAULT, the owner, and Green Brook Pontiac, the lessor. Because in VAULT's reply its attorney failed to explain how VAULT could lease the car to Johnson but Green Brook be named as the lessor on the lease, the Court adjourned the matter to allow for a sur-reply.

In the sur-reply, Mr. Coblentz submits an affidavit dated May 20, 2013 wherein he states "There is no relationship between VAULT and Green Brook Pontiac."

The motion must be denied for several reasons. First, even without Mr. Coblentz's conflicting affidavits, the lease is not in admissible form because it is impossible to read. Second, we know that the lease was between Johnson and Green Brook Pontiac – how can there be ***no*** relationship between Green Brook (the lessor) and VAULT, the owner (as Mr. Coblentz swears in his sur-reply), and "no other relationship between Leona Johnson and [VAULT}" ***other than the lease***, as Mr. Coblentz swears in his moving affidavit? That would mean that VAULT had no relationship with the named lessor (Green Brook) but had a lease with the named lessee (Johnson). This just does not make sense.

Clearly, in order to ascertain the facts, someone from VAULT with knowledge of the transaction(s) needs to be deposed, and to bring to the deposition legible documents. VAULT's conflicting affidavits have failed to answer the important questions; at a deposition, plaintiff's attorney can ask questions and then ask necessary follow-up questions. If, after the deposition,

plaintiff's counsel decides to pursue the claim against VAULT as a vicariously liable owner, then VAULT may bring another motion for summary judgment (annexing, at least, the deposition transcript and a legible lease). Accordingly, it is hereby

ORDERED that defendant Vehicle Asset Universal Leasing Trust's (VAULT's) motion to dismiss the complaint based on the Graves Amendment is DENIED and it is further

ORDERED that the parties are directed to appear at the June 7, 2013 DCM conference in Room 103, 80 Centre Street at 9:30AM.

This is the Decision and Order of the Court.

Dated: May 24, 2013
New York, New York

HON. ARLENE P. BLUTH, JSC

ARLENE P. BLUTH
J.S.C.

FILED
MAY 28 2013
COUNTY CLERK'S OFFICE
NEW YORK