Sattar v Forman
2015 NY Slip Op 32902(U)
July 22, 2015
Supreme Court, Nassau County
Docket Number: 601983/15
Judge: Karen V. Murphy

Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 10 NASSAU COUNTY

PRESENT:
Honorable Karen V. Murphy
Justice of the Supreme Court

x

CADRATELA SATTAR and SCHOKFAH SORBAT,

Plaintiff(s),

-against-

DAVID S. FORMAN and NISSAN-INFINITI; LT, NILT, INC.; TRUSTEE,

Defendant(s).

x

Index No. 601983/15

Motion Submitted: 6/17/15
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....X
Answering Papers.....X
Reply.....X
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....X

Defendants Nissan-Infiniti LT and NILT, Inc. (NILT defendants) move this Court for an Order dismissing the complaint against them, and any and all cross-claims, on the ground that the pleading fails to state a cause of action upon which relief may be granted (***CPLR § 3211 [a][7]***).[1] Plaintiffs oppose the requested relief.

The complaint alleges, *inter alia*, that the subject accident occurred on February 24, 2015, in Nassau County, New York, and that defendant Forman owned, operated, maintained, managed, and controlled the vehicle that came into contact with plaintiffs'

[1]Defendant Forman's answer does not contain any cross-claims against the NILT defendants. NILT defendants do not make any cross-claims against Forman.

vehicle. The complaint also alleges that the NILT defendants are the titled owner of Forman's vehicle, and that Forman operated that motor vehicle with the knowledge, permission and consent of the NILT defendants. Plaintiffs also allege that Forman operated the vehicle within the scope of his employment by the NILT defendants. The complaint does not allege that the NILT defendants themselves actually operated, maintained, managed, or controlled the vehicle that Forman was driving at the time of the subject accident.

The NILT defendants assert that the complaint should be dismissed for failure to state a cause of action (***CPLR § 3211 [a][7]***), based upon what is commonly known as the Graves Amendment (***49 USC § 30106***). Because plaintiffs' theories of liability against the NILT defendants are based solely upon vicarious liability pursuant to Vehicle and Traffic Law (***VTL***) § 388, the NILT defendants contend that the Graves Amendment preempts that section of the VTL with respect to owners of vehicles that are engaged in the business of leasing motor vehicles. The NILT defendants also assert that they were not responsible for maintenance of the vehicle pursuant to the lease terms, and that Forman was not their agent, servant or employee.

When deciding a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the complaint a liberal construction, accepting all facts as alleged in the complaint to be true, and according the plaintiffs the benefit of every favorable inference (*see* ***Marcantonio v Picozzi III***, 70 AD3d 655 [2d Dept 2010]). The sole criterion on a motion to dismiss is "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cognizable action at law a motion for dismissal will fail" (***Guggenheimer v Ginzburg***, 43 NY2d 268, 275 [1977]; *see* ***Leon v Martinez***, 84 NY2d 83, 87-88, [1994]; ***Sokol v Leader***, 74 AD3d 1180, 1180-1181 [2d Dept 2010]; ***Gershon v Goldberg***, 30 AD3d 372, 373 [2d Dept 2006]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (***EBC I, Inc. v Goldman, Sachs & Co.***, 5 NY3d 11, 19 [2005]).

"When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it . . . dismissal should not eventuate" (***Guggenheimer***, ***supra*** at 275).

"In sum, in instances in which a motion to dismiss made under CPLR 3211 (subd [a], par7) is not converted to a summary judgment motion, affidavits may be received for a limited purpose only, serving normally to remedy defects in the complaint, although there may be instances in which a submission by plaintiff will conclusively establish that he has no cause of action. It seems after the amendment of 1973 affidavits submitted by the

defendant will seldom if ever warrant the relief he seeks *unless too the affidavits establish conclusively that plaintiff has no cause of action*" (***Rovello v Orofino Realty Co.***, 40 NY2d 633, 636 [1976] [emphasis added]).

The Graves Amendment, enacted in 2005, is federal legislation preempting vicarious liability imposed by states on commercial lessors of vehicles (***Vehicle and Traffic Law § 388***). The Graves Amendment has been found to be constitutional, and it acts as a bar to an action against a rental or leasing company for injuries and/or damages based solely on a theory of vicarious liability (*see* ***Graham v Dunkley***, 50 AD3d 55 [2d Dept 2008]).

The legislation reads, in pertinent part:

> (a) In general. 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 on the part of the owner (or an affiliate of the owner).
>
> (***49 USC § 30106)*** (emphasis added).

Where there is a claim of independent negligence asserted against the rental/leasing company, the Graves Amendment is inapplicable, and cannot be asserted as a defense to the action (*see generally* ***Park v Edge Auto Inc.***, 2009 NY Misc LEXIS 2427 [Sup Ct Nassau County 2009]; ***Sigaran v ELRAC***, 22 Misc3d 1101A [Sup Ct Bronx County 2008]).

In support of their motion to dismiss, the NILT defendants submit the pleadings, a copy of the motor vehicle lease agreement, a copy of the certificate of title, the Notice to Admit and response thereto, and the affidavits of their employees, Allison Gennings and Marta Lujan.[2]

In this case, it is undisputed that defendant Forman entered into a vehicle lease agreement on July 29, 2012. The parties to that lease are Nissan of Garden City and Forman.

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[2]The Court will not consider the submitted police accident report because it is not certified.

Paragraph 19 of said lease places all responsibility for vehicle maintenance and necessary repairs upon defendant Forman.

Defendant Forman's responses to the Notice to Admit further establishes that he entered into the subject lease agreement on July 29, 2012, that he was responsible for all maintenance and repairs to the subject vehicle during the lease term, that the accident giving rise to this action occurred during the lease term, and that he was not an agent, employee, or servant of the NILT defendants, and was not acting within the authority or scope of any duty or employment of those defendants during the lease term, including on February 24, 2015, the date of the accident.

The affidavit of Allison Gennings establishes that she is a supervisor in the Regional Collections Department of Nissan Motor Acceptance Corporation, which is a servicer for NILT (the lease trust), for which NILT, Inc. is the trustee. According to her affidavit, NILT, Inc. takes assignments of leases and "is the title holder and owner of Nissan motor vehicles leased to consumers in New York, including the leased vehicle at issue in this case." NILT and NILT, Inc. took title to the subject vehicle, and the submitted certificate of title corroborates Ms. Gennings' statements. Her affidavit further establishes that the accident occurred during the lease term, and that the NILT defendants "do not engage in the repair, maintenance, delivery, service, operation, management, possession, supervision, control, or inspection of the vehicles that are leased through authorized Nissan dealerships. Instead, the lessee is responsible for repairing and maintaining the leased vehicle during the lease term, including the Leased Vehicle at issue." Ms. Gennings also refers to paragraph 19 of the submitted lease agreement outlining Mr. Forman's responsibilities for maintenance and repairs.

Marta Lujan's affidavit establishes that Mr. Forman was not an agent, servant, or employee of the NILT defendants, or of any subsidiary, and was not acting within the authority or scope of employment by the NILT defendants on the date of the subject accident.

As noted, the complaint makes no claims of independent negligence against the NILT defendants; therefore, the Graves Amendment is applicable to the facts of this case, warranting dismissal of the complaint against the NILT defendants. Moreover, the terms of the lease explicitly place the responsibility for the maintenance and repairs to the subject vehicle squarely on the shoulders of defendant Forman.

Based upon the foregoing, the NILT defendants have also established that Forman was not their employee, servant, or agent. As a consequence thereof, the NILT defendants are entitled to dismissal of plaintiffs' claims that are based on the doctrine of *respondeat superior*. The NILT defendants cannot be held responsible for the actions of one who was

not their employee, or acting under the scope of their authority.

Plaintiffs' speculative claim that dismissal should be denied as premature because their action would be prejudiced if "mechanical malfunction and/or difficulty allegations were found during the course of discovery" is insufficient to defeat the NILT defendants' motion (*see generally*, ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]; ***Kimyagarov v Nixon Taxi Corp.***, 45 AD3d 736, 737 [2d Dept 2007]).

Accordingly, the NILT defendants' motion to dismiss the complaint as asserted against them, only, is granted (*see* ***Pedroli v Mercedes-Benz USA, LLC***, 94 AD3d 842 [2d Dept 2012]; ***Burrell v Barreiro***, 83 AD3d 984 [2d Dept 2011]).

The foregoing constitutes the Order of this Court.

Dated: July 22, 2015
Mineola, N.Y.

Karen V. Murphy
J. S. C.