

Coombs v Toyota Lease Trust
2018 NY Slip Op 31485(U)
April 9, 2018
Supreme Court, Queens County
Docket Number: 5199/17
Judge: Janice A. Taylor
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

OS

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

-----x
RAYMOND R. COOMBS,

Plaintiff(s),

Index No.: 5199/17

Motion Date: 10/24/17

- and -

Motion Cal. No.: 33

Motion Seq. No: 1

TOYOTA LEASE TRUST, DILLON A. DONOVAN,
ORIAN A. SCOTT,

Defendant(s).
-----x

FILED
APR 12 2018
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 - 10 read on this motion by the defendant for an order dismissing the complaint.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affidavit in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Exhibits-Service.....	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

On August 21, 2016, plaintiff Raymond B. Coombs was a passenger in a vehicle operated by Orian A. Scott, which was involved in an accident with a vehicle owned and operated by Dillon A . Donovan at the intersection of 154th Street and 134th Avenue, in Queens County. Mr. Coombs alleges that he sustained serious injuries, as defined by Insurance Law § 5102(d) as a result of said accident. The vehicle operated by Orian A. Scott, a 2011 Toyota, is owned by Toyota Lease Trust (TLT).

Plaintiff commenced this action on May 17, 2017, and seeks to recover damages for personal injuries alleged

sustained in the subject motor vehicle accident. Although not alleged in the verified complaint, the basis of plaintiff's claim against TLT is Vehicle and Traffic Law §388, which imposes vicarious liability upon the lessor of a vehicle for the negligence of the driver. The plaintiff has also alleged a claim of negligent maintenance against TLT.

Defendant TLT served a verified answer and interposed eleven affirmative defenses, and a cross claim against defendant Dillon A. Donovan. The fifth affirmative defense alleges that the action is federally preempted pursuant to 49 USC § 30106 (the Graves Amendment), and the eighth cause of action alleges that the complaint fails to state a cause of action.

Counsel for defendant Scott also served an answer on behalf of defendant Orian A. Scott and TLT which interposed seven affirmative defenses and a cross claim against defendant Donovan. The seventh affirmative defense alleges that plaintiff's action against TLT is barred by the Graves Amendment, 49 USC § 30106.¹

Defendant Dillon A. Donovan has served a verified answer and interposed five affirmative defenses and a cross claim against Orian A. Scott and TLT.

Defendant TLT now moves, prior to depositions, for an order dismissing the complaint against it, pursuant to CPLR 3211 (a) (7) alleging that under the Federal Transportation Equity Act of 2005 (49 USC § 30106), commonly known as the "Graves Amendment," a leasing/rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter, its employees or agents. TLT asserts that the Graves Amendment preempts Vehicle and Traffic Law § 388.

In support of its motion, TLT submits a copy of the pleadings; a copy of the lease agreement between Toshiba A. Sinclair and Desmond W. Kidd and Plaza Oldsmobile Ltd, dated February 27, 2016; a copy of the certificate of title of the subject vehicle, a 2016 Toyota Corolla, dated March 11, 2016, showing that title is in the name of Toyota Lease Trust; an affidavit dated June 27, 2014 from Timothy Hale, the Lease

¹Counsel for defendant Scott was apparently unaware that counsel for TLT had already appeared and served an answer on behalf of TLT.

Collections Manager for Toyota Motor Credit Corporation, a servicer for TLT; and a copy of the police accident report.

In his affidavit, Timothy Hale states that he is the lease collections manager for Toyota Motor Credit Corporation, a servicer for TLT. He states that on February 27, 2016, Toshiba Sinclair and Desmond W. Kidd, entered into a lease agreement with Plaza Oldsmobile, Ltd., an authorized Toyota dealership located at 2721 Nostrand Avenue, Brooklyn, New York, for the lease of a 2016 Toyota Corolla. The 36 month lease was assigned from the dealership to TLT. Upon assignment of the lease agreement, TLT obtained title ownership of the leased vehicle. Mr. Hale states that the lease was in full force and effect on August 21, 2016, the date of the subject accident. He states that TLT does not engage in maintenance or inspection of vehicles leased through the authorized Toyota dealership. The lessee is solely responsible for repairing and maintaining the leased vehicle during the term of the lease.

In his affidavit in support of the motion, TLT's counsel, Clifford B. Aaron, Esq., states that pursuant to the Graves Amendment, which preempts Vehicle and Traffic Law § 388 as TLT was an assignee lessor and is engaged in the business of leasing motor vehicles, TLT is not vicariously liable under Vehicle and Traffic Law § 388 and, therefore, the complaint fails to state a cause of action. It is therefore asserted that the complaint and all cross claims against TLT should be dismissed as a matter of law.

In opposition, plaintiff's counsel states that defendant has not met its burden of proving that the pleadings fail to state a cause of action, in that the Graves Amendment does not shield owners/lessors from claims of negligent maintenance. Plaintiff asserts that as there is a claim of negligent maintenance asserted against TLT that the Graves Amendment does not apply. Counsel argues that TLT has not demonstrated that it is entitled to the protection of the Graves Amendment as it has not shown that TLT was not negligent in maintaining the vehicle and has not shown the absence of negligence or wrongdoing on its part. It is further asserted that the motion is premature, as the parties have yet to be deposed.

TLT's counsel, in a reply affidavit, asserts that plaintiff's bill of particulars does not provide a factual predicate that amplifies the complaint's boilerplate claim of negligent maintenance. It is asserted that the bill of particulars simply set forth a list of claims of

failure to maintain and repair the vehicle, failure to keep it in proper operating condition, failure to inspect the vehicle for patent and latent defects, and failure to maintain the vehicle's equipment, without any factual foundation.

On a motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (see *Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]; *Antoine v Kalandrishvili*, 150 AD3d 941, 941-942 [2d Dept 2017]; *Aviaev v Nissan Infiniti LT*, 150 AD3d 807 [2d Dept 2017]; *Khan v MMCA Lease, Ltd.*, 100 AD3d 833 [2d Dept 2012]). However, bare legal conclusions are not presumed to be true (see *Antoine v Kalandrishvili*, 150 AD3d at 941-942; *Aviaev v Nissan Infiniti LT*, 150 AD3d at 807; *Khan v MMCA Lease, Ltd.*, 100 AD3d at 834; *Parola, Gross & Marino, P.C. v Susskind*, 43 AD3d 1020, 1021 [2d Dept 2007]). Moreover, where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and, unless it has been shown that a material fact as claimed by the plaintiff 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 (see *Guggenheimer v Ginzburg*, 43 NY2d at 274-275; *Antoine v Kalandrishvili*, 150 AD3d at 941-942; *Aviaev v Nissan Infiniti LT*, 150 AD3d at 807; *Khan v MMCA Lease, Ltd.*, 100 AD3d at 834; *Fishberger v Voss* 51 AD3d 627, 628 [2d Dept 2008]).

Under the Graves Amendment, in order for recovery to be barred, the owner, or an affiliate of the owner, must be engaged in the trade or business of renting or leasing motor vehicles, and the owner, or its affiliate, must not be negligent (see *Antoine v Kalandrishvili*, 150 AD3d at 941-942; *Aviaev v Nissan Infiniti LT*, 150 AD3d at 807; *Khan v MMCA Lease, Ltd.*, 100 AD3d at 834; *Khan v MMCA Lease, Ltd.*, 100 AD3d 833, 834 [2d Dept 2012]; *Graham v Dunkley*, 50 AD3d 55 [2d Dept 2008]; *Clarke v Hirt*, 46 Misc 3d 571, 572-576 [Sup Ct, Queens County 2014]).

Here, there is no dispute that TLT is a leasing company

and therefore cannot be held liable as a lessor of the vehicle in question. To the extent that plaintiff alleges that TLT negligently failed to maintenance and repair the subject Toyota vehicle, this claim is not supported by any factual allegations in either the complaint or the bill of particulars. Mr. Hale states in his affidavit that TLT "does not engage in repair, maintenance, delivery, service, operation, management, possession, supervision, use, control, marketing or inspection of the vehicles that are leased through the authorized Toyota dealerships" and that the lessee is responsible for the vehicle's maintenance and repair. The lease agreement, submitted herein, states that the lessee is responsible for the maintenance and repair of the leased vehicle. TLT, therefore, has established that it does not engage in the repair, maintenance or inspection of the vehicles it leases. Although plaintiff asserts that the within motion is premature in that the parties have not been deposed, he has not demonstrated that facts essential to justify opposition to the within motion may exist but cannot be stated (see CPLR 3211[d]). Plaintiff, thus, has not demonstrated that discovery is warranted in order to flesh out its claims.

Accordingly, defendant TLT's motion to dismiss the complaint and all cross claims against it, based solely on vicarious liability against said defendant, is granted. It is hereby, ORDERED that the Clerk of Court is directed to enter judgment in favor of defendant, Toyota Lease Trust dismissing the complaint as defendant Toyota Lease Trust only.

Dated: April 9, 2018



 JANICE A. TAYLOR, J.S.C.

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