Steadman v Stoeckl
2020 NY Slip Op 30289(U)
February 3, 2020
Supreme Court, New York County
Docket Number: 158352/2017
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **IAS MOTION 22**

Justice

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RODNEY STEADMAN

Plaintiff,

- v -

WILHELM STOECKL,

Defendant.

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INDEX NO. 158352/2017

MOTION DATE 10/03/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ORDERED that defendant's motion to dismiss plaintiff's complaint is granted.

This suit stems from a motor vehicle accident which occurred on May 26, 2017, on Morningside Avenue, near Hancock Place, in the County, City and State of New York, when a vehicle operated by defendant Wilhelm Wolfgang Stoeckl allegedly struck a vehicle owned and operated by plaintiff Rodney Steadman. Defendant Stoeckl's motion to dismiss is made pursuant to CPLR 3211 (a)(1), that there is a defense founded upon documentary evidence; CPLR 3211 (a)(2), that the defendant maintains diplomatic immunity pursuant to 28 U.S.C. § 1364 and that such subject matter jurisdiction rests exclusively with the federal courts; and CPLR 3211 (a)(7), that plaintiff fails to state a cause of action.

"On a motion to dismiss the complaint pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88

[1994]). "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, again dismissal should not eventuate" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

Defendant argues that he is immune from suit in New York Supreme Court pursuant to the Diplomatic Relations Act, 28 U.S.C. § 1364, which bars the suit before this Court. 28 U.S.C. § 1364 provides that:

> (a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is, or was at the time of the tortious act or omission, a member of a mission (within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254(a)(3))) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention of Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

The Court of Appeals has found that "a diplomat who drives a vehicle negligently is immune from suit" (*Tikhonova v. Ford Motor Co.*, 4 NY3d 621, 623 [2005]). The United States District Court has specifically addressed New York State Courts' handling of diplomatic immunity in traffic-accident tort suits and found that "[f]ederal courts have exclusive jurisdiction over civil suits against 'members of a mission or members of their families,' so suits against these individuals should not be in state court at all" (*Green v. First Liberty Insurance Corp.*, 321 F. Supp. 3d 368, 374 [E.D.N.Y. 2018]). "The question of immunity from legal process under treaties and statutes of the United States lies within the province of the courts" (*Shamsee v Shamsee*, 74 AD2d 357, 360 [2d Dept 1980]). Defendant argues that as he is a protected foreign diplomat such that this Court lacks subject matter jurisdiction of this matter.

In support of his motion, defendant attaches his affidavit, a 2007 correspondence from the United States Mission to the United Nation's Counselor, Host Country Affairs, David M. Shapiro, a 2013 correspondence from the Under-Secretary-General for Management of the United Nations, Yukio Takasu, and a certified copy of defendant's German diplomatic passport (Mot, Exh C-F). In opposition, plaintiff argues that the documentation presented by defendant is insufficient to demonstrate that Mr. Stoeckl is entitled to diplomatic immunity. First, plaintiff claims that defendant's affidavit is inadmissible as it does not include a certificate of conformity as required by CPLR 2309(c). Second, plaintiff alleges that defendant's claim to diplomatic immunity pursuant to the Diplomatic Relations Act is misplaced. Plaintiff argues that 28 U.S.C. § 1364 is applicable to "a member of a mission" and that defendant Stoeckl has provided no proof that his position as Vice-Chair of the International Civil Service Commission confers on him the status of a member of a mission.

Plaintiff argues that the 2013 correspondence refers to defendant Stoeckl' s position as Vice-Chair of the International Civil Service Commission which is a position different from his title as Under Secretary General of the United Nations. Plaintiff argues that "there is no indication that the 'privileges and immunities' afforded to Mr. Stoeckl as Under Secretary General of the United Nations were afforded to him as Vice-Chair of the International Civil Service Commission" (Aff in Opp, at 12). Plaintiff's opposition further argues that the documentary evidence provided by defendant is inadmissible and insufficient to establish defendant's claim for diplomatic immunity. Plaintiff alleges that defendant has failed to lay foundation for defendant's exhibits as business records and that defendant's attached correspondences are uncertified. However, plaintiff introduces such documentation as the crux of their argument to demonstrate that defendant was not a member of the mission afforded

immunity at the time of the accident. Plaintiff cannot have it both ways and rely on such evidence while claiming that it is inadmissible for defendants. Here, it is uncontested that the documentation is authentic. In fact, plaintiff relies upon such documentation to support his argument. Thus, the Court deems defendant's attached correspondences as admissible.

Plaintiff's opposition hinges on a First Department Appellate Term ruling in which the Court did not recognize a respondent's claim of diplomatic immunity from suit (*Rhee v. Dahan*, 45 NYS2d 684 [1st Dept 1982][finding that respondent's "position as an attaché of the Lebanese government to the United Nations does not of itself confer general immunity status. A representative to international organizations is immune from suit or legal process only relating to acts performed by him in his official capacity and falling within his function as such an employee" citing 22 U.S.C. § 288d[b]). The Court notes that the case at bar is distinctly different from that in *Rhee v. Dahan*. Here, the matter at issue involves the actions of defendant in a motor vehicle accident. The Court in *Rhee v. Dahan* did not extend diplomatic immunity towards defendant Dahan's real property and made a clear distinction that "[a] summary proceeding is one essentially directed against the property, not the person. Acts referable to that property are outside the scope of the attach's duties and do not warrant immunity" (*id.*, at 685 internal citations omitted).

The present motion to dismiss is one directed against defendant, a person, and his act of driving a vehicle. It is well established that a diplomat who drives a vehicle negligently is immune from suit under the Vienna Convention on Diplomatic Relations (22 U.S.C. § 254d). At issue here is whether defendant Stoeckl is indeed a protected individual within the scope of The Diplomatic Relations Act. The language of 28 U.S.C. § 1364 does not explicitly state that immunities are available to a defined class of "diplomat." Rather, the statute states that "an

individual, who is, or was at the time of the tortious act or omission, a member of a mission (within the meaning of section 2(3) of the Diplomatic Relations Act" is afforded immunities against liability (28 U.S.C. § 1364a).

Mission is defined in 22 U.S.C. § 254a as "missions within the meaning of the Vienna Convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention." Article 1 of the Vienna Convention defines the members of a mission as:

(b) the "members of the mission" are the head of the mission and the members of the staff of the mission;
(c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
(d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
(e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
(f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
(g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;

Defendant Stoeckl, at the time of the accident, was appointed as a member of the United Nations General Assembly and designated as Vice-Chair of the International Civil Service Commission (Mot, Exh E). The 2013 correspondence sent to defendant by the Untied Nations is addressed to defendant and "c/o Permanent Mission of Germany to the United Nations New York" (*id.*). Thus, defendant has demonstrated that he is a "member of a mission" as listed in 28 U.S.C. § 1364.

However, even if defendant was not a "member of the mission" as alleged by plaintiff, defendant would still be entitled to diplomatic immunity. Defendant has provided the necessary documentary evidence to demonstrate his diplomatic immunity. Defendant has demonstrated that

plaintiff is mistaken in assuming that the 2013 correspondence denotes that defendant was no longer Under Secretary General of the United Nations. Defendant has made clear that defendant was simultaneously Under Secretary General while also holding the position of Vice Chair of the International Civil Service Commission. It is undisputed that the 2007 correspondence specifically states that defendant is "entitled in the territory of the United States to the privileges and immunities of a diplomatic envoy under the terms of Section 19 of the Convention on the Privileges and Immunities of the United Nations" (Mot, Exh D). 28 U.S.C. § 1364(a) explicitly states that "district courts shall have original and exclusive jurisdiction . . . of any civil action . . . against . . . an individual described in Section 19 of the Convention of Privileges and Immunities of the United Nations."

Plaintiff mistakenly relies on the Court's ruling in *Reinoso v Bragg*, 28 Misc 3d 1235[A], 2010 NY Slip Op 51609[U] [Sup Ct, NY County 2010]) to argue that defendant is not immune from the suit at bar. The Court in *Reinoso v. Bragg* did not extend diplomatic immunity to the husband of a United Nations Assistant Secretary General (*id.*). The Court noted that to demonstrate his wife's position and thus her diplomatic immunity, defendant must provide a sworn affidavit from someone with personal knowledge of her status (*id.*). Here, defendant has provided an affidavit by himself, who has personal knowledge of his position, along with corroborating documentary evidence. As to plaintiff's assertion that defendant's affidavit is inadmissible for failure to include a certificate of conformity, the Appellate Division, First Department has found that the absence of a certificate of conformity for an out-of-state affidavit "is a mere irregularity, and not a fatal defect" (*Matapos Technology Ltd. V. Compania Andina de Comercio Ltda*, 68 AD3d 672 [1st Dept 2009] [internal citations omitted]). Thus, the Court finds that defendant's affidavit is admissible.

The Diplomatic Relations Act was designed to protect injured parties with a viable claim against members of diplomatic missions in civil court proceedings. These protections were intended to be afforded to plaintiff's in federal district courts. Defendant has demonstrated that he was indeed a diplomat and mission member afforded diplomatic immunity from a negligence action in New York Supreme Court. Plaintiff's claim lies within the exclusive and original jurisdiction of the federal district courts. Thus, defendant's motion to dismiss plaintiff's Complaint is granted on the grounds that the defendant maintains diplomatic immunity, pursuant to 28 U.S.C. § 1364, and that the subject matter jurisdiction rests exclusively with the federal courts.

Accordingly, it is

ORDERED that the complaint is dismissed in its entirety as against defendant Wilhelm W. Stoeckl, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that within 20 days of entry, counsel for defendant shall serve a copy of this upon plaintiff with notice of entry.

This constitutes the Decision/Order of the Court.

2/3/2020
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE