

Colt v New Jersey Tr. Corp.

2020 NY Slip Op 33260(U)

October 2, 2020

Supreme Court, New York County

Docket Number: 158309/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

JEFFREY COLT, BETSY TSAI,

Plaintiff,

- v -

NEW JERSEY TRANSIT CORPORATION, NJ TRANSIT
BUS OPERATIONS, INC., ANA HERNANDEZ

Defendant.

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INDEX NO. 158309/2017

MOTION DATE 07/15/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 66, 67, 68, 69, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

were read on this motion to/for DISMISSAL.

Before the Court is defendants' motion for an Order pursuant to CPLR § 3211(a)(2) to dismiss plaintiff's complaint in the above entitled action on the grounds that it is barred by the doctrine of State Sovereign Immunity. This matter stems from an accident, which occurred on February 9, 2017, on Dyer Ave and 40th Street in the City, County and State of New York, when pedestrian plaintiff Jeffrey Colt was injured when he was struck by a bus operated by defendant Ana Hernandez and owned by defendants NJ Transit Bus Operations and New Jersey Transit Corporation (hereinafter "NJT").

NJT argues that plaintiff's claims are barred by the doctrine of State Sovereign Immunity. Defendants cite to *Franchise Tax Bd. Of California v. Hyatt*, 136 US 1277 [2016] in an attempt to argue NJT is exempt from suit in the State of New York. Defendants argue that pursuant to the Supreme Court of the United States' (hereinafter "Supreme Court") ruling in

Franchise, NJT is considered an arm of the State of New Jersey as part of the executive branch and is thus exempt from suit in the state of New York (Mot, at 6). Defendants' argument is unavailing as the facts of this case are not analogous to that of *Franchise*. Even if this Court were to find that NJT is an arm of the State of New Jersey, defendants have failed to prove that New Jersey is exempt from suit by a private citizen in the State of New York.

Defendants argue that the States' sovereign immunity is embedded in the Constitution. However, this Court finds that the Supreme Court was clear in its ruling in *Franchise* that a State may permit a party to sue a foreign State. The Court found that a suit against a foreign state is permissible so long as it is consistent with the Full Faith and Credit Clause. "The Full Faith and Credit Clause applies in a straightforward fashion to state court judgments: 'A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter'" (*Franchise* at 1285 citing *Nevada v. Hall*, 440 U.S. 1182 [1979]).

While it is true that the Full Faith and Credit Clause does not allow one State to apply another State's law that violates its "own legitimate public policy" it does not bar applying the law of another State (*Franchise* at 1282). Rather, when that law "exhibit[t][s] a 'policy of hostility to the public Acts' of a sister State, such suit should be banned. In *Franchise* the court did not allow Nevada to maintain jurisdiction over California because the facts of the Nevada decision "embodies a critical departure from its earlier approach. Nevada has not applied the principles of Nevada law ordinarily applicable to suits against Nevada's own agencies. Rather it has applied a special rule of law applicable only in lawsuits against its sister States, such as California" (*Franchise* at 1281).

The United States Supreme Court found that allowing Nevada to award damages greater than \$50,000 was "opposed" to California law and "it is also inconsistent with the general

principles of Nevada immunity law” (*id.* at 1278). The Court elaborated, “a State that disregards its own ordinary legal principles on this ground is hostile to another State” (*id.* at 1281). Here, in allowing suit against NJT, this Court does not depart from its own ordinary legal principles. The State of New York does not bar suit against the New York equivalent of the NJT, the Metropolitan Transportation Authority (hereinafter “MTA”) and the New York City Transit Authority (hereinafter “NYCTA”) for motor vehicle accidents. Thus, applying the same law to the NJT as the Court would to the MTA/NYCTA, the State does not disregard its own ordinary legal principles and is not hostile to the State of New Jersey.

Plaintiff’s opposition claims that the Supreme Court in *Franchise* held that a State has a waivable privilege to assert immunity against suit by a private individual in another State. In other words, a State may consent to be sued in another State. Plaintiff argues that NJT waived its immunity through the New Jersey Tort Claims Act (“NJTCA”) which allows tort claims for personal injuries to be brought against New Jersey public entities in which the “public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances” (N.J.S.A. 59-2). Here, the Court notes that New Jersey permits victims of motor vehicle accidents to sue the State of New Jersey in New Jersey and has not raised jurisdictional objections to suits against it in New York in the past (*Ceretta v New Jersey Transit Corp.*, 267 AD2d 128 [1st Dept 1999]). In *Franchise* the Supreme Court found that the Franchise Tax Board of California did not consent to the Nevada lawsuit as they fought jurisdiction in Nevada from the inception of the suit.

Here, in contrast to *Franchise*, the defendants have not objected to jurisdiction from the inception of this action. The present suit was commenced in 2017 and it has taken defendants

three years to raise a jurisdictionally based objection. The Court finds that NJT has waived its right to object to jurisdiction in New York. NJT avails itself of the roadways of the State of New York on a daily basis. To hold NJT immune from suit for negligence in motor vehicle accidents in New York would constitute a miscarriage of justice to the victims of accidents involving NJT vehicles, which operate in New York on a daily basis. Thus, for the reasons stated above, defendants' motion is denied.

Accordingly, it is

ORDERED that defendants' motion to dismiss plaintiff's claim on the grounds that it is barred by the doctrine of State Sovereign Immunity is denied; and it is further

ORDERED that within 30 days of entry, plaintiffs shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

10/2/2020
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: