

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS V. POLIZZI IA Part 14
Justice

MINNIE KNIGHT, Proposed Administratrix of Estate of TERRENDA SERIGHT, <p style="text-align: right;">Plaintiff, -against-</p>	x	Index Number <u>24577</u> 2001 Motion Date <u>July 6,</u> 2004 Motion Cal. Number <u>17</u>
LAKEESTA S. DAWSON, MICHELLE COVINGTON, and GE CAPITAL LEASING COMPANY, INC., and "JOHN DOE" persons or company intended to be registered and/or title holder of subject vehicle, <p style="text-align: center;">Defendants.</p>	x	

The following papers numbered 1 to 20 read on this motion by defendant GE Capital Auto Leasing, Inc. s/h/a GE Capital Auto Lease, Inc. (GE Capital) for (1) summary judgment dismissing the complaint, (2) summary judgment against codefendant Michelle Covington on GE Capital's cross claim for contractual indemnification, and (3) dismissal of the complaint on the grounds of forum nonconveniens.

	<u>Papers Numbered</u>
<u> </u> Notice of Motion - Affidavits - Exhibits.....	1-5
Answering Affidavits - Exhibits.....	6-17
Reply Affidavits - Exhibits.....	18-20

Upon the foregoing papers it is ordered that the motion is determined as follows:

This action arises out of a one-vehicle accident on Interstate 80 in Ohio which resulted in the death of plaintiff's decedent, Terrenda Seright. Decedent was a passenger in the vehicle which was being operated by defendant Lakeesta Dawson. The vehicle was registered in New York in the name of defendant Michelle Covington who had leased the vehicle from Major Chevrolet, Inc., of Long

Island City, a nonparty, for a 42-month term. The lease was assigned to defendant GE Capital which also held title to the vehicle at the time of the accident.

The claim against GE Capital in this matter is premised upon its alleged vicarious liability under Vehicle and Traffic Law § 388 as title owner of the vehicle. Contrary to movant's contention, Ohio law does not govern this action. Resolution of a choice of law issue involving a loss allocating statute such as section 388 is guided by the principles set forth by the Court of Appeals in Neumeier v Kuehner (31 NY2d 121 [1972]). (See, Padula v Lilarn Props. Corp., 84 NY2d 519 [1994]; Cooney v Osgood Mach., 81 NY2d 66 [1993].) Under Neumeier, when the passenger and the driver are domiciled in the same state, and the car is registered in that state, the law of that state rather than the law of the place of the accident should control. (31 NY2d at 128.) The Neumeier rule applicable to instances where the passenger and the driver are domiciled in different states provides that the law applied usually will be that of the state where the accident occurred but not if "displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants." (31 NY2d at 128.)

In this case, the driver and the registered owner of the subject vehicle were domiciliaries of New York, where the car was registered. Movant has not refuted plaintiff's evidence that decedent resided in Queens, New York, at the time of the accident and had done so for approximately two years prior thereto, but there is conflicting evidence in the record as to decedent's domicile at the date of her death. Questions are also raised as to whether plaintiff is estopped from claiming that decedent was domiciled in New York rather than New Jersey. (But see, Matter of the Estate of Mulhern v Osta, 31 AD2d 317 [1969].) However, even assuming that decedent was a New Jersey domiciliary at the time of her death, this is an instance where displacing the normally applicable rule would advance the purposes of the relevant substantive law. The intent of Vehicle and Traffic Law § 388, within the New York statutory scheme, is to ensure that owners of vehicles that are subject to regulation in New York act responsibly with regard to those vehicles. (See, Morris v Snappy Car Rental, 84 NY2d 21, 27 [1994].) This case involves a vehicle leased in New York and registered in New York to a New York domiciliary. At the time of the accident, the driver of the vehicle was a New York domiciliary, the deceased passenger was a resident of New York and the title owner was a corporation authorized to do business in New York. Under these circumstances, New York's interest in ensuring responsible ownership of vehicles subject to regulation in New York is served by the application of New York law. Furthermore, since none of the passengers in the vehicle were Ohio domiciliaries, and

the vehicle was only traveling through Ohio on the interstate to reach Michigan, the destination in what was planned as a round trip, the multi-state system will not be affected and litigants will not be subject to great uncertainty as a result of the departure from the general rule.

The court also rejects GE Capital's assertion that it is not an owner of the subject vehicle within the meaning of Vehicle and Traffic Law § 388 and thus cannot be held vicariously liable for injuries caused by permissive users of the leased vehicle. GE Capital maintains that the initial lease agreement was not a true lease but a transaction which created a security interest, and concludes that it holds a security interest in the leased vehicle and comes within the exemption from liability afforded by Vehicle and Traffic Law § 388(3) to those who sell vehicles under a contract of sale which reserves a security interest in favor of the vendor or its assignee. However, upon review of the document, which includes a statement that it is a true lease, not a sale, it is clear that the agreement between defendant Covington and GE Capital's assignor was a lease and not a security agreement. (See, Litvak v Fabi, 8 AD3d 631 [2004]; Ryan v Sobolevsky, 4 AD3d 222 [2004].) Thus, GE Capital, the titleholder, is an owner subject to liability under Vehicle and Traffic Law § 388 and is not entitled to summary relief. (See, Litvak v Fabi, supra; Ryan v Sobolevsky, supra.)

In addition, dismissal for forum non conveniens is not warranted. Movant has failed to meet its burden of demonstrating why New York is inconvenient and Ohio is a more appropriate forum. (See, Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 [1984]; Banco Ambrosiano, S.P.A. V Artoc Bank & Trust Ltd., 62 NY2d 65, 74 [1984]; Yoshida Printing Co. v Aiba, 213 AD2d 275 [1995]; Anagnostou v Stifel, 204 AD2d 61 [1994].) Moreover, GE Capital has delayed more than three years and four months since the action was commenced, and four months since the note of issue was filed, before making this application. (See, National Union Fire Ins Co. of Pittsburgh, Pa v Worley, 257 AD2d 228, 232 [1994]; Anagnostou v Stifel, supra; Bock v Rockwell Mfg. Co., 151 AD2d 629 [1989].)

Accordingly, the parts of the motion which are for summary judgment dismissing the complaint and dismissal of the complaint based on forum non conveniens are denied.

The part of the motion that is for summary judgment on GE Capital's cross claim for contractual indemnification against defendant Covington is granted. (See, Citywide Auto Leasing v City of New York, 294 AD2d 528 [2002]; see also, ELRAC v Ward, 96 NY2d 58 [2001]; Morris v Snappy Car Rental, supra; Ruddock v Boland Rentals, Inc., 5 AD3d 368 [2004].) GE Capital has made a prima facie showing of entitlement to judgment as a matter of law on this

issue and defendant Covington has not opposed the application.
(See, Kallaitzakis v ELRAC, 296 AD2d 531 [2002].)

Dated: October 8, 2004

J.S.C.