

Delgado v Mercoylano
2007 NY Slip Op 31022(U)
May 1, 2007
Supreme Court, Queens County
Docket Number: 0026319/2005
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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RAFAEL A. DELGADO,
Plaintiff,

Index
Number: 26319/05

- against -

Motion
Date: 04/17/07

ANTHONY MERCOYLIANO and
MAJOR AUTOMOTIVE INC.,

Motion
Cal. Number: 16

Defendants.

Motion Seq. No. 2

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The following papers numbered 1 to 10 read on this motion by defendant Major Automotive Inc. for summary judgment dismissing the complaint as against it.

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

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

At the direction of Justice Jeremy S. Weinstein, Administrative Judge, this case was reassigned from Justice David Elliot to this Court on April 12, 2007, and the instant motion was received in chambers on April 23, 2007.

Motion by defendant Major for summary judgment dismissing the complaint as against it, pursuant to CPLR 3212(a) and 49 U.S.C. §30106, is granted.

Plaintiff allegedly sustained injuries as a result of a motor vehicle accident in which the motor vehicle operated by him allegedly was struck in the rear by the motor vehicle owned by Major and operated by Mercoyliano on the Gowanus Expressway near the intersection of 39th Street in Kings County on June 17, 2003.

The negligence of the operator of a motor vehicle is imputed to its owner where the use or operation of the automobile was permissive on the part of the owner (see Vehicle and Traffic Law §388). Thus, where the negligence of the operator of the motor vehicle is established, the owner of the vehicle is, likewise, vicariously liable.

On August 10, 2005, Congress enacted the Safe, Accountable, Flexible Efficient Transportation Equity Act(49 U.S.C. §30106)(the "Graves Amendment"), which provides, in pertinent part:

(a) . . . 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 the 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).

Thus, the Graves Amendment explicitly pre-empts state vicarious liability laws with respect to owners of motor vehicles engaged in the business of renting or leasing those motor vehicles. The law applies to "any action commenced on or after the date of enactment of this section" (§30106[c]).

There is no dispute that the instant action was commenced on December 8, 2005, after the effective date of the Graves Amendment. Moreover, in his affidavit in support of the motion, Steve Nawi, president of Major, acknowledges that Major is the owner of the subject vehicle and that it rented said vehicle to the New York City Police Department on a month-to-month basis. Annexed to the motion papers and referenced in Nawi's affidavit is a copy of the rental agreement between Major and the New York City Police Department for the subject vehicle dated January 22, 2003. Major has demonstrated that it is in the business of renting or leasing motor vehicles. In addition, no negligence or criminal wrongdoing is alleged or shown on the part of Major.

Therefore, the Graves Amendment applies to bar the instant action as against Major.

Plaintiff contends that the Graves Amendment is unconstitutional and, therefore, must not be given effect by this Court. However, the Second Department has recognized the Graves Amendment as abolishing vicarious liability of long-term lessors of motor vehicles based solely on ownership (see Jones v. Bill, 34 AD 3d 741 [2nd Dept 2006]). Likewise, the Fourth Department has held that "section 30106 preempts Vehicle and Traffic Law §388 and bars this action against defendants if plaintiff commenced the action on or after August 10, 2005" (Williams v. White, __ NY 3d __, __, 2007 NY Slip Op 02227 *1 [4th Dept, March 16, 2007]).¹

Therefore, it is clear that the Second Department, as well as the Fourth Department, recognize 49 U.S.C. §30106 as preempting VTL §388 and abolishing vicarious liability against those in the business of renting or leasing motor vehicles. To the extent that Graham v. Dunkley (13 Misc 3d 790 [Supreme Court, Queens County 2006]), cited by plaintiff, holds that the Graves Amendment is an unconstitutional exercise of congressional authority under the Commerce Clause, this Court declines to follow it.

Accordingly, the motion is granted and the complaint is dismissed as against Major.

Dated: May 1, 2007

KEVIN J. KERRIGAN, J.S.C.

¹The Court in Williams declined to follow the Jones decision only with respect to the issue of whether, in determining if the action was commenced after the effective date of the Graves Amendment and, thus, whether that action was barred by the statute, the applicable date is the date the original action was commenced or the date a supplemental summons and complaint was filed.