

McFarlane v Aksanov
2007 NY Slip Op 31187(U)
May 11, 2007
Supreme Court, Richmond County
Docket Number: 0101706/2006
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND PART DCM 3**

**Index No.: 101706/2006
Motion No.: 1 & 2**

JAMES M. McFARLANE,

Plaintiff

against

DECISION & ORDER

HON. JOSEPH J. MALTESE

YELENA AKSANOV and KEY BANK, U.S.A. N.A.,

Defendants

The following items were considered in the review of these motions for summary judgment and default judgment

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1, 2
Answering Affidavits	2
Replying Papers	3, 4
Exhibits	Attached to Papers
Memorandum of Law	

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

In motion number 1 the defendant, Yelena Aksanov, moves this court for an order dismissing this action against her as she alleges that she was not properly served. In the same motion defendant, Key Bank, U.S.A., N.A., seeks an order dismissing this action against them pursuant to Subchapter X of Chapter 301 of Title 49 of the United States Code. The plaintiff opposes this motion and moves for an order granting a default judgment against Yelena Aksanov.

This action was commenced by the plaintiff to recover for damages sustained as a result of a motor vehicle accident on June 20, 2003 between himself and the defendant, Yelena Aksanov. Yelena Aksanov was driving a “leased vehicle” which was owned by Key Bank, U.S.A., N.A.

Defendant Aksanov seeks an order dismissing this action against her because the defendant never properly served her and the statute of limitations has since expired. According to the affidavit of service, the defendant was served on June 7, 2006 by substituted service “nail & mail” at 67 Sharrots Road, 1st Floor, Staten Island, New York 10309. However, the defendant avers that she

permanently resided in Florida as of December 28, 2005. She further states in her affidavit that she duly informed the State of New York of her move to Florida inasmuch as she surrendered her New York State Drivers License to the Department of Motor Vehicles on or about December 28, 2005. As further evidence of her move to Florida, the defendant relies upon her New York State Driving Abstract which shows that on January 13, 2006, her New York State Driver's License was surrendered to Florida.

The plaintiff moves this court for a default judgment, claiming that at the time the service was made, the defendant Aksanov was living in New York at the address that the substituted service was effectuated. The plaintiff argues that the process server spoke with the neighbors who confirmed that the defendant resided at 67 Sharrots Road, Staten Island, New York. Accordingly, this action will be referred to Judicial Hearing Officer Michael Ajello to conduct a *Traverse* Hearing with respect to service of the defendant.

The defendant Key Bank, U.S.A., N.A. moves for an order pursuant to CPLR § 3211 dismissing this action against them as the action against them is federally preempted. United States Code, Title 39, Chapter 301, Subchapter X, § 30106, commonly known as the *Graves* Amendment was enacted into law on August 10, 2005 and reads in relevant part as follows:

“§ 30106 *Rented or leased motor vehicle safety and responsibility:*

(a) In General - 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 of political subdivision thereof, by reason of being the owner of the vehicle (or 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 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 affiliate of the owner).”

This law prevents plaintiffs from bringing causes of action against the leasing company (the bank) for any harm their vehicles cause as long as they are not guilty of negligence or wrongdoing. Simply because the leasing company is the “owner” of the vehicle, a party cannot bring a lawsuit against them for a motor vehicle action where the lessee may have negligently operated the vehicle. Therefore, the action is dismissed against defendant Key Bank, U.S.A., N.A. with prejudice.

Accordingly, it is hereby:

ORDERED, that the case is referred to Judicial Hearing Officer Michael Ajello to hear and determine the issue of service in a traverse hearing; and it is further

ORDERED, that if determined that service was properly effectuated, a default judgment shall be entered against the plaintiff; and it is further

ORDERED, that if determined that service was not attained, then the plaintiff’s case is dismissed as against defendant Yelena Aksanov; and it is further

ORDERED, that this action is dismissed with prejudice against Key Bank, U.S.A., N.A.

ENTER,

DATED: May 11, 2007

Joseph J. Maltese
Justice of the Supreme Court