

**Krieger v Vault Trust**

2008 NY Slip Op 30491(U)

February 14, 2008

Supreme Court, Nassau County

Docket Number: 9345-07/

Judge: Antonio I. Brandveen

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN  
J. S. C.

PHYLLIS KRIEGER,

Plaintiff,

- against -

VAUL TRUST and CARL WILLIAM SCHMIDT,

Defendants.

TRIAL / IAS PART 32  
NASSAU COUNTY

Index No. 9345/07

Motion Sequence No. 001

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1</u>
Answering Affidavits .....	<u>2</u>
Replying Affidavits .....	<u>      </u>
Briefs: Plaintiff's / Petitioner's .....	<u>      </u>
Defendant's / Respondent's .....	<u>3</u>

The defendant Vaul Trust moves for an order pursuant to CPLR 3211 (a) (2), (7) to dismiss the plaintiff's claims against it as a matter of law because federal law expressly prohibits the assertion of vicarious liability claims against automobile leasing companies. The plaintiff opposes the motion. The underlying personal injury action arises from a motor vehicle accident on July 20, 2006, on the Southern State Parkway, in Nassau County. The plaintiff initiated the action by summons and verified complaint filed on May 29, 2007. The defendants joined issue by a verified answer with affirmative defenses on August 10, 2007. One of the affirmative defenses explicitly claims the cause of action against the defendant Vaul Trust is improper.

The attorney for the defendant Vault Trust points, in a supporting affirmation dated November 5, 2007, to the subject General Motors Acceptance Corporation/Vault Trust lease dated January 26, 2006, and the affidavit dated October 29, 2007 from Leland D. Coblenz, an officer of the defendant Vault Trust, and the National Coordinator Supervisor of General Motors Acceptance Corporation. Coblenz states the defendant Vault Trust is a subsidiary of General Motors Acceptance Corporation, and is in the business of renting and leasing vehicles. Coblenz asserts the defendant Carl Schmidt entered into the lease agreement with General Motors Acceptance Corporation/Vault Trust for a 2006 Chevrolet Trailblazer, vehicle identification number 1 GNDT 13S3 6219 4278. Coblenz avers, although the defendant Vault Trust was the legal registered owner of the vehicle at the time of the alleged occurrence, the defendant Vault Trust was the owner in name only, and did not maintain possession nor custody over the vehicle at the time of the accident. Coblenz also states the Schmidt was not an agent, servant nor employee of the either General Motors Acceptance Corporation or Vault Trust at the time of the accident nor was Schmidt acting on behalf of or for the benefit of either General Motors Acceptance Corporation or Vault Trust. Coblenz claims neither General Motors Acceptance Corporation or Vault Trust were in any way responsible for the alleged negligent control of the subject 2006 Chevrolet Trailblazer at the time of the alleged happening. The attorney for the defendant Vault Trust asserts the plaintiff's claims against the defendant Vault Trust must be dismissed as the Transportation Equity Act of 2005 (49 USCA § 30106) expressly prohibits the assertion of vicarious liability claims against automobile leasing companies. The attorney for the defendant Vault Trust requests the Court dismiss the complaint as to the defendant Vault Trust for the lack of

subject matter jurisdiction, and for the failure to state a cause of action.

The plaintiff's counsel states, in an opposing affirmation dated November 19, 2007, "Graves Amendment" as reflected in the Transportation Equity Act of 2005 (49 USCA § 30106) constitutes an unconstitutional overreaching of Congressional power under the Commerce Clause. The plaintiff's counsel states the liability which the plaintiff seeks to impose upon the defendant Vault Trust arises pursuant to Vehicle and Traffic Law § 388. The plaintiff's counsel contends the "Graves Amendment" does not regulate an activity having a substantial relationship to interstate commerce, thus it is not part of a federal regulatory scheme, and it lacks any legitimate or rational basis. The plaintiff's counsel supports the plaintiff's legal contentions with a detailed analysis of the federal legislative intent among other legal assertions. The plaintiff's counsel opines the Court should determine that Congress has exceeded the authority granted by the Commerce Clause when it enacted the subject statute, and deny the defense motion in its entirety. The plaintiff's counsel asserts the defendant has failed to make the requisite showing required by 49 U.S.C. § 30106 (a) (2). The plaintiff's counsel points out the defendant fails to offer any proof satisfying the statutory requirement upon which the request for relief is predicated. The plaintiff's counsel avers, although the affirmation in support of the motion refers to an affidavit from Leland D. Coblenz explaining the relationship between the entities at issue, the document is not an affidavit nor is it in admissible form because there is no expression nor language indicating the administration of any oath nor that the party executing the document was otherwise sworn. The plaintiff's counsel states the document is factually deficient because it fails to set forth any recitation about the motor vehicle condition at the

time the vehicle was leased or rented particularly with respect to negligence or criminal wrongdoing on the part of the owner or affiliate of the owner. The plaintiff's counsel maintains the correspondence also fails to address the requirement of § 30106 of the Transportation Equity Act (Graves Amendment) as it relates to financial responsibility statutes. The plaintiff's counsel submits this motion is premature because discovery is required before the instant application may be properly entertained. The plaintiff's counsel contends the Vehicle and Traffic Law § 388 constitutes a "financial responsibility" provision within 49 U.S.C. 30106 (b), so the plain meaning of 49 U.S.C. 30106 (b) provides lessors such as this defendant will remain viable defendant in actions such as the instant matter. The plaintiff's counsel argues, since the Graves Amendment does not define the meaning of "financial responsibility," the common meaning as reflected in the New York State law must apply.

Vehicle and Traffic Law § 388 (1) provides:

Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner. Whenever any vehicles as hereinafter defined shall be used in combination with one another, by attachment or tow, the person using or operating any one vehicle shall, for the purposes of this section, be deemed to be using or operating each vehicle in the combination, and the owners thereof shall be jointly and severally liable hereunder.

Vehicle and Traffic Law § 388 (3) provides:

As used in this section, "owner" shall be as defined in section one hundred twenty-eight of this chapter and their liability under this section shall be joint and several. If a vehicle be sold under a contract of sale which reserves a security interest in the vehicle in favor of the vendor, such vendor or his assignee shall not, after delivery of such vehicle, be deemed an owner within

the provisions of this section, but the vendee, or his assignee, receiving possession thereof, shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession of such vehicle. A secured party in whose favor there is a security interest in any vehicle out of his possession, shall not be deemed an owner within the provisions of this section.

The defendant, in support of the motion, provided the rental agreement indicating the 2006 Chevrolet Trailblazer involved in the collision was leased to the plaintiff on the day of the accident, and requests the Court dismiss the complaint because the defendant Vault Trust has established that it is engaged in the trade or business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing alleged against it (*see* 49 U.S.C. § 30106). In opposition, plaintiff asserts that 49 U.S.C. § 30106 is an unconstitutional exercise of Congressional power under the Commerce Clause and concerns an area of law reserved to the States by the Tenth Amendment of the United States Constitution.

On August 10, 2005, President George W. Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), a comprehensive transportation bill which included the Graves Amendment, now codified at 49 USC § 30106. The section, entitled "Rented or leased motor vehicle safety and responsibility," states, in relevant part: "(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 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 an 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)."

*Graham v. Dunkley*, --- N.Y.S.2d ----, 2008 WL 269527, 2008 N.Y. Slip Op. 00958 [2<sup>nd</sup> Dept., February 1, 2008].

The enactment of the Transportation Equity Act of 2005 (49 USCA § 30106), went into effect on August 10, 2005, more than a year before this subject motor vehicle accident.

The only basis for a claim by the plaintiff against the defendant Vault Trust is Vehicle and Traffic Law § 388, which imposes vicarious liability upon the defendant Vault Trust for the negligence of the driver. However, Transportation Equity Act of 2005 (49 USCA § 30106), the “Graves Amendment,” bars New York State vicarious liability actions commenced on or after August 10, 2005, against owners of motor vehicles “engaged in the trade or business of renting or leasing motor vehicles,” such as Vault Trust (*see Williams v. White*, 40 A.D.3d 110, 832 N.Y.S.2d 713 [2007]; *Kuryla v. Halabi*, 39 A.D.3d 485, 835 N.Y.S.2d 230 [2007]; *Jones v. Bill*, 34 A.D.3d 741, 825 N.Y.S.2d 508 [2006]; *also see Seymour v. Penske Truck Leasing Co., L.P.*, 407CV015, (S.D.Ga.7-30-2007) and *Garcia v. Vanguard Car Rental USA, Inc.*, 5:06-cv-220-Oc-10GRJ, [M.D.Fla.3-5-2007] both holding 49 U.S.C. § 30106 constitutional with *Vanguard Car Rental USA, Inc. v. Huchon*, 06-10082-civ-Moore/Garber [S.D.Fla.9-14-2007], where the constitutionality of the statute has been upheld in two out of the three federal court cases found to have considered the question).

Generally, at common law, absent an agency relationship, the owner of a vehicle was not vicariously liable for injuries caused by a driver using the vehicle with the owner's permission (*see Morris v Snappy Car Rental*, 84 NY2d 21, 27). In 1924, the New York State Legislature enacted a statute which imposed such liability (*see former Highway Law § 282-e*). The substance of that statute has been continued and is now codified in Vehicle and Traffic Law § 388, which provides, in relevant part: “Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.” The statute “expresses the policy that one injured by the negligent operation of a motor vehicle should have recourse to a financially responsible defendant” (*Continental Auto Lease Corp. v Campbell*, 19 NY2d

[\* 7 ]  
350, 352; see *Tikhonova v Ford Motor Co.*, 4 NY3d 621, 624; *Morris v Snappy Car Rental*, 84 NY2d at 27).  
*Graham v. Dunkley*, --- N.Y.S.2d ----, 2008 WL 269527, *supra*).

The Second Department held: “We agree with the weight of precedent that the Graves Amendment was a constitutional exercise of Congressional power pursuant to the Commerce Clause of the United States Constitution.”...Contrary to the plaintiff's contentions, the Graves Amendment does regulate an economic activity - the rental and lease of vehicles. That the statute does so by preempting rules of state tort law does not make it unconstitutional. (*Graham v. Dunkley*, --- N.Y.S.2d ----, 2008 WL 269527, *supra*).

Congress may choose to preempt state liability schemes in order to effectuate regulation of economic activities which affect interstate commerce. It is the primary activity--here, the rental and lease of vehicles--which is to be evaluated for its economic nature and its impact on interstate commerce. There can be no real dispute that the rental and lease of vehicles, and the conditions under which such transactions occur, are economic activities which impact the national market. While the plaintiff argues that the link between state vicarious liability rules and interstate commerce is too attenuated to support the legislation, the link here is direct...The finding that Congress had the authority, pursuant to the Commerce Clause, to enact the Graves Amendment, thereby preempting conflicting New York law, ends the analysis (*see* US Const, art VI, cl 2).

(*Graham v. Dunkley*, --- N.Y.S.2d ----, 2008 WL 269527, *supra*).

CPLR 3211 (a) provides:

Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: (2) the court has not jurisdiction of the subject matter of the cause of action; and (7) the pleading fails to state a cause of action.

This Court has carefully reviewed and considered all of the parties' papers on this motion. As a matter of law as enunciated in the holding of *Graham v. Dunkley* (--- N.Y.S.2d ----, 2008 WL 269527, *supra*), the Court finds the plaintiff has failed to state a cause of action. The Court need not decide the subject matter jurisdiction issue in light of

this determination.

Accordingly, the defense motion is granted pursuant to CPLR 3211 (a) (2), (7) to dismiss the plaintiff's claims based solely on vicarious liability against the defendant as those claims failing to state a cause of action.

So ordered.

Dated: February 14, 2008

ENTER:



I.S.C.  
HON. ANTONIO I. BRANDVEEN

FINAL DISPOSITION XXX

NON FINAL DISPOSITION

**ENTERED**

FEB 19 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**