

Antonelli v DCFS Trust
2008 NY Slip Op 30650(U)
February 4, 2008
Supreme Court, Richmond County
Docket Number: 0101585/2007
Judge: Joseph J. Maltese
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3

Index No.:1015852007
Motion No.:001

MAUREEN ANTONELLI,

Plaintiff

against

DECISION & ORDER
HON. JOSEPH J. MALTESE

DCFS TRUST,
BENEDICT CALANDRINO, and
JOHN DUNDON,

Defendants

The following items were considered in the review of this motion for a

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

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

Defendant DCFS Trust’s motion dismissing plaintiff’s complaint pursuant to U.S.C. § 30106 is granted.

Facts

Plaintiff alleges that she was struck by a motor vehicle operated by defendant John Dundon (“Dundon”) which was owned by defendants Benedict Calandrino (“Calandrino”) and defendant DCFS Trust. Plaintiff contends that Dundon ran a stop sign and struck her vehicle causing her serious injury.

In response to these allegations defendant, DCFS Trust, brought this motion for summary judgment to dismiss plaintiff’s complaint pursuant to a federal statute, 49 U.S.C. § 30106 (hereinafter known as the “Graves Amendment”). Plaintiff opposes this motion and asserts that the aforementioned statute is an unconstitutional exercise of Congress’s power under the Commerce Clause of the U. S. Constitution¹. The United States of America through the

¹ US Const, art I, § 8 [3].

Department of Justice filed a motion to intervene with a memorandum in support of the constitutionality of the federal statute, which has been accepted by this court.

Discussion

A. Jurisdiction of this Court

The New York State Constitution confers general original jurisdiction in law and equity to the Supreme Court². The legislature defined the general jurisdiction of the court in Judiciary Law § 140-b, wherein it states:

The general jurisdiction in law and equity which the supreme court possesses under the provisions of the constitution includes all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time, and by the court of chancery in England on the fourth day of July, seventeen hundred seventy-six, with the exceptions, additions and limitations created and imposed by the constitution and laws of the state. Subject to those exceptions and limitations the supreme court of the state has all the powers and authority of each of those courts and may exercise them in like manner.³

The United States Supreme Court has long recognized the authority of state courts to evaluate constitutional questions with respect to laws passed by Congress. Over one hundred seventy five years ago in *Green v. Lessee of Neal*, the Court stated that:

On all questions arising under the constitution and laws of the union, this court may exercise a revising power; and its decisions are final and obligatory on all other judicial tribunals, state as well as federal. A state tribunal has a right to examine any such questions and to determine them, but its decision must conform to that of the supreme court, or the corrective power may be exercised.⁴

The U.S. Supreme Court reiterated its position in *Grubb v. Public Utilities Commission of Ohio*, where it explained that:

² NY Const art VI, § 7.

³ *Judiciary Law* § 140-b

⁴ *Green v. Lessee of Neal*, 31 U.S. 291 [1832]

. . . the state and federal courts have concurrent jurisdiction of suits of a civil nature arising under the Constitution and laws of the United States, save in exceptional instances where the jurisdiction has been restricted by Congress to the federal courts.⁵

Therefore, it is without question that this court has the authority to review the Constitutionality of the Graves Amendment in light of the challenge raised by plaintiff.

B. The Statutes

Congress enacted the “Safe, Accountable, Flexible Efficient Transportation Equity Act- A Legacy for Users”⁶ on August 10, 2005 which includes a passage known commonly as the Graves Amendment that seeks to prohibit imposing vicarious liability against car owners who rent or lease their vehicles, if those vehicles are subsequently involved in accidents.

In pertinent part this statutes provides that:

(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)

. . .

(c) Applicability and effective date. Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section [enacted Aug. 10, 2005] without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment

⁵ *Grubb v. Public Utilities Commission of Ohio*, 281 U.S. 470 [1930]

⁶ 49 U.S.C. 30106

(d) Definitions. In this section, the following definitions apply:

(1) Affiliate. The term “affiliate” means a person other than the owner that directly or indirectly controls, is controlled by, or is under common control with the owner. . .

(2) Owner. The term “owner” means a person who is–

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person, or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

(3) Person. The term “person” means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.⁷

In the current case, the federal statute 49 U.S.C. § 30106 in that it seeks to preempt New York Vehicle and Traffic Law § 388. Specifically, the federal law seeks to preempt that part of the statute which states:

1. Every owner or 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. . .⁸

In 1924 the New York State Legislature enacted Highway Law § 282-e which sought to alter the general common law rule that an owner of a vehicle was not responsible for the negligent actions of a driver that was using the vehicle. The Legislature assigned liability to owners for negligent acts committed by drivers that were operating the vehicle with permission.⁹

The defendant argues that the aforementioned federal statute preempts New York’s

⁷ 49 U.S.C. 30106

⁸ *Vehicle and Traffic Law* § 388

⁹ NY VTL § 388 is the successor statute to Highway Law § 282-e.

vicarious liability statute that embodied the policy of New York State for approximately eighty four years.¹⁰ In *Young v. Masci*, the U.S. Supreme Court in 1933 upheld New York State’s vicarious liability statute reasoning that it is within the power of the state to protect its citizens with respect to motor vehicle accidents.¹¹ In *Fried v. Seippel*, the New York State Court of Appeals stated that VTL § 388 “. . . is part of the legislatively prescribed system for protecting innocent victims of automobile accidents by assuring that there will be a financially responsible party who is available to answer in damages.”¹² As recently as 2003 the New York State Court of Appeals reasoned that

Vehicle and Traffic Law § 388 was enacted to “ensure access by injured persons to ‘a financially responsible [party] against whom to recover for injuries’” and “to change th[e] common-law rule and to impose liability upon the owner of a vehicle ‘for the negligence of a person legally operating the car with the permission, express or implied, of the owner’¹³ (citations omitted)

C. Federal Jurisdiction to Preempt State Laws

“Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.”¹⁴ The United States Justice Department in its intervening papers argues that the Graves Amendment has a solid foundation in Congress’s enumerated powers by specifically pointing to the *Commerce Clause*¹⁵ and *Necessary and Proper Clause*¹⁶, of the U.S. Constitution.

¹⁰ *Graham v. Dunkley*, 13 Misc.3d 790 [2006]

¹¹ *Young v. Masci*, 289 U.S. 253 [1933]; See also, *Graham v. Dunkley*, 13 Misc.3d 790 [2006] (Citing *Young v. Masci*)

¹² *Fried v. Seippel*, 80 N.Y.2d 32 [1992].

¹³ *Hassan v. Montuori*, 99 N.Y.2d 348 [2003].

¹⁴ *United States v. Morrison*, 529 U.S. 598 [2000]

¹⁵ US Const, art I, § 8 [3].

¹⁶ US Const, art I, § 8 [18].

Through the *Commerce Clause*, the United States Congress has the express power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”¹⁷ Additionally, Congress is permitted “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”¹⁸

Congressional power to legislate over the States is tempered by the Tenth Amendment which states, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁹ Laws that are properly passed by Congress are afforded the protection of the *Supremacy Clause* that states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.²⁰

The United States Justice Department argues this court should uphold the constitutionality of the *Graves Amendment* as a proper application of the *Supremacy Clause*. It asks that this court ignore the opinion of Justice Polizzi from Queens County in *Graham v. Dunkley* that held that the Graves Amendment exceeded Congress’ power under the *Commerce Clause* and violated the Tenth Amendment to the United States Constitution.

The Commerce Clause

The Constitution recognized two separate and distinct governments that have authority to

¹⁷ US Const, art I § 8 [3]

¹⁸ US Const, art I § 8 [18]

¹⁹ US Const, 10th Amend

²⁰ US Const, art VI [2]

govern the populace. The Supreme Court summarized this concept in *U.S. v. Lopez*.²¹ In that opinion the Court said:

The Constitution creates a Federal Government of enumerated powers. ‘The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.’ This constitutionally mandated division of authority ‘was adopted by the Framers to ensure protection of our fundamental liberties.’ ‘Just as the separation and independence of coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.’²²

The *Commerce Clause* has a long and well tread history of interpretation by the courts. The Supreme Court recognizes that this is a delicate balance between what is wholly national in scope what is local. In *National Labor Relations Bd. v. Jones & Laughlin Steel Corporation*²³, the Court stated that:

[t]he authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce ‘among the several States’ and the internal concerns of a state. That distinction between what is national and what is local in the activities is vital to the maintenance of our federal system.²⁴

The delicate balance between state and federal authority is complicated and subject to interpretation. In order guide courts evaluating the Commerce Clause the Supreme Court articulated a test to determine whether this delicate balance tipped improperly in favor of the federal government. The Court in *Lopez* held that Congress may Constitutionally regulate 1) “the use of the channels of interstate commerce”; 2) “the instrumentalities of interstate

²¹ 514 U.S. 549 [1995]

²² *Id.* (Internal Citations omitted)

²³ 301 U.S. 1 [1937]

²⁴ *Id.*

commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities”; and 3) “those activities having a substantial relation to interstate commerce.”

The Court further clarified the final prong of the *Lopez* test in *U.S. v. Morrison*²⁵. In that opinion the Court stated that the factual inquiry determining whether certain activities have a “substantial relation to interstate commerce” must evaluate: 1) whether the activity is commercial in nature; 2) whether there is an express jurisdictional element that limits the reach of the statute; 3) whether Congress made any findings with respect to the regulated activities effects on interstate commerce; and 4) whether the link between the activity the statute seeks to regulate and the substantial effect on interstate commerce was attenuated.

In *Vanguard Car Rental USA, Inc. v. Drouin*²⁶ (hereinafter “*Vanguard*”) the United States District Court for the Southern District of Florida applied this test to the Graves Amendment. In that decision the District Court found that the Graves Amendment “regulates tort liability, and does not directly regulate either channels or interstate commerce, or the use of those channels.” Additionally, the court specifically found that the Graves Amendment “regulates tort liability rather than regulating or protecting either car itself, or its use.”

When the District Court turned its attention to the third and final prong of the *Lopez* test it found that the Graves Amendment did not regulate “those activities having a substantial relation to interstate commerce.” Specifically the District Court found:

[a]lthough several Representatives debated the bill and discussed the impact of vicarious liability statutes on car rental companies doing business in multiple states, no official Congressional findings were made. Nor does the statute contain an element expressly limiting its jurisdictional reach. Regarding the third element, vicarious tort liability does have an economic impact. It creates a potential express which, as mentioned during the Congressional debate, the car rental or leasing company may pass through to its customers wherever it does business. In considering the fourth element, the effect on interstate commerce is attenuated.

²⁵ 529 U.S. 598 [2000]

²⁶ 521 F.Supp.2d 1343 [2007]

The Florida vicarious liability law creates potential tort liability. Companies which rent or lease automobiles may choose to respond to that potential for liability by changing their business plan or fees, which could affect interstate commerce.

The District Court therefore found that the *Graves Amendment* was an unconstitutional exercise of Congress' power to regulate interstate commerce.

Necessary and Proper Clause

In addition to the *Commerce Clause* the United States Justice Department cites the *Necessary and Proper Clause* as providing the constitutional foundation for the *Graves Amendment*. Specifically, the United States cites Justice Scalia's concurrence in *Gonzalez v. Raich*.²⁷ Justice Scalia argues that the majority opinion in *Gonzalez* mistakenly upheld Congress's regulation of a purely intrastate activity based on the Commerce Clause. Justice Scalia reasoned that

[a]s we implicitly acknowledged in *Lopez*. . . Congress's authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as 'an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. . . Although this power 'to make . . . regulation effective' commonly overlaps with the authority to regulate economic activities that substantially affect interstate commerce, and may in some cases been confused with that authority, the two are distinct. The regulation of an intrastate activity may be essential to a comprehensive regulation of interstate commerce even though the intrastate activity does not itself 'substantially affect' interstate commerce. Moreover . . . Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce. The relevant question is simply whether the means chosen are 'reasonably adapted' to the attainment of a legitimate end under the

²⁷ 545 U.S. 1 [2005].

commerce power.²⁸

Justice Scalia's reasoning suggests that it is the *Necessary and Proper Clause* of the Constitution rather than the *Commerce Clause* that allows Congress to enact laws that exclusively act on purely *intrastate* activities.

However, Congress's ability to exercise its authority over intrastate activities is not unfettered—there is a caveat concerning this use of power. According to Justice Scalia's concurrence, in order for Congress to legitimately regulate an intrastate activity under the *Necessary and Proper Clause* it must regulate an activity that is essential in a larger regulation of interstate commerce.

The U.S. District Court for the Southern District of Florida examined the *Graves Amendment* pursuant to the reasoning set forth by the majority in *Gonzales v. Raich* that held that Congress's regulation of *intrastate* commerce was Constitutional under the *Commerce Clause*, rather than the *Necessary and Proper Clause* as suggested by Justice Scalia. The Florida District Court in *Vanguard* specifically found:

There is no evidence that vicarious tort liability for car rental or leasing companies would undercut some larger federal regulatory scheme for the car rental industry. Nor is vicarious tort liability for car rental or leasing companies being used by states to control interstate commerce in rental cars. Nor has any argument been raised that the car rental or leasing industry requires protection, or is in the least bit of danger. The Congressional discussions of the Statute posit merely that the liability may result in increased costs to the business, and thus to the consumer.²⁹

The U.S. District Court found that there was no overarching federal regulation of commerce that would be served Congress's regulation of a purely intrastate activity. While the findings of the District Court do not specifically speak to the *Necessary and Proper Clause*, the reasoning employed directly comports with that suggested by Justice Scalia in his concurrence in *Gonzalez*.

²⁸ *Id.* (internal citations omitted)

²⁹ 521 F.Supp.2d 1343 [2007].

D. New York State Law Concerning the Graves Amendment

On February 1, 2008 the New York Supreme Court, Appellate Division, Second Department reversed Justice Polizzi’s holding in *Graham v. Dunkley*³⁰ that the *Graves Amendment* was unconstitutional because it exceeded Congress’s power under the *Commerce Clause*.³¹

The Appellate Division rejected the argument that the *Graves Amendment* regulates “state-imposed liability for harm” – which is not in itself an instrumentality of, or thing or person in commerce.” The court stated that “. . . the statute aids in the regulation of the national market for leased and rented automobiles. Motor vehicles are ‘the quintessential instrumentalities of modern interstate commerce.’” The Appellate Division specifically found that the “. . . Graves Amendment . . . regulates both instrumentalities of, and things in, interstate commerce.”

In addition, the Appellate Division found that “. . . 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.”

The Appellate Division reasoned that “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.” The court went on to say:

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 this legislation, the link here is direct. As detailed in the amicus briefs, vicarious liability laws caused lessors to either cease leasing cars in states having them, opting for more expensive balloon note structures, or spread the cost of higher insurance premiums to lease

³⁰ 13 Misc.3d 790 [2006].

³¹ ____ AD3d ____ [2008]; 2008 N.Y. Slip Op 00958

customers nationwide.

Conclusion

As a trial court subject to stare decisis this court is bound by the decisions of the Appellate Division, Second Department. Since the Appellate Division Second Department has ruled on the constitutionality of the Graves Amendment, this court has no other recourse, but to grant Defendant DCFS Trust's motion for Summary Judgment.

Accordingly it is hereby;

ORDERED that Defendant DCFS Trust's motion to dismiss the plaintiff's complaint against them is granted.

ENTER,

DATED: February 4, 2008

Joseph J. Maltese
Justice of the Supreme Court