

Gordon v New York City Tr. Auth.

2008 NY Slip Op 31421(U)

May 15, 2008

Supreme Court, New York County

Docket Number: 0110425/2006

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

GORDON, MYLES
Plaintiff,
-v-
NEW YORK CITY TRANSIT AUTHORITY, et. al.,
Defendants.

INDEX No. 110425/06
MOTION DATE _____
MOTION SEQ. No. 002
MOTION CAL No. _____

The following papers, numbered 1 to 3 were read on this motion for _____.

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... _____
Answering Affidavits- Exhibits _____
Replying Affidavits _____

CROSS-MOTION: _____ YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

Dated: 5/15/08

Donna M. Mills
J.S.C.

DONNA M. MILLS, J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

FILED
MAY 21 2008
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COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

-----X
MYLES GORDON and SYLVIA PURUGGANAN,
his wife,

Plaintiffs,

Index No. 110425/2006

-against-

NEW YORK CITY TRANSIT AUTHORITY, CITY
OF NEW YORK, JOSEPH ENGLANOFF, TRICIA
M. CIPRIANI and VOLKSWAGEN CREDIT
LEASING, LTD.,

Defendants.

FILED
MAY 21 2008
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NEW YORK

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MILLS, J.:

In this personal injury action, defendant VW Credit Inc., s/h/a Volkswagen Credit Leasing Ltd. (VW Credit) moves, for an order granting it summary judgment, dismissing the complaint, pursuant to CPLR 3212.

Plaintiffs Myles Gordon and Sylvia M. Purugganan are New York State residents. VW Credit is a foreign corporation licensed to do business in the State of New York. It is in the business of renting and leasing motor vehicles. Defendant New York City Transit Authority (NYCTA) is an agency of the City of New York. Defendant City of New York is a municipal corporation. Defendant Joseph Englanoff is a New York State resident who is employed by NYCTA as a bus operator. Defendant Tricia M. Cipriani is a Pennsylvania resident.

The following facts are not in dispute. On March 20, 2002, Cipriani entered into an agreement (Lease) with VW Credit to lease a 2002 Volkswagen Jetta sedan for a period of 48 months beginning March 20, 2002, and ending March 20, 2006. On January 2, 2006, the leased vehicle was in the possession, care, custody, and control of Cipriani pursuant to the terms and conditions of the Lease. This action arises out of a motor vehicle accident that occurred on

January 2, 2006 at the intersection of 11th Avenue and 41st Street in New York, New York. On the day in question, Gordon was on the corner of the above intersection awaiting the walk signal when a bus, operated by Englanoff and owned by NYCTA, collided with Cipriani's leased vehicle. The collision forced Cipriani's automobile to veer off the roadway and onto the sidewalk. The vehicle struck Gordon, whereby he sustained injury and damage to his body.

As a result, plaintiffs commenced this lawsuit asserting causes of action for personal injury and loss of consortium which assert damages that exceed the maximum monetary jurisdiction of all lesser courts of this State, together with attorneys' fees, costs and disbursements in this action.

Defendant argues that it is entitled to summary judgment because pursuant to 49 USC § 30106, also known as the "Graves Amendment," VW Credit cannot be held vicariously liable for the negligence of Cipriani based solely on its ownership of the vehicle. Defendant further argues that it is entitled to summary judgment because the Graves Amendment effectively preempts all state laws holding motor vehicle owners vicariously liable for the negligence of a driver, provided that the owner is engaged in the business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner, and here, it is undisputed that VW Credit is engaged in the business of leasing motor vehicles and there is no evidence of negligence or criminal wrongdoing on its part.

Plaintiffs contend that defendant is not entitled to summary judgment because: (1) the federal statute upon which its motion is premised, 49 USC § 30106, violates the Commerce Clause of the Tenth Amendment of the United States Constitution by impermissibly restricting States' authority to regulate tort law; (2) the regulation of tort law, specifically vicarious liability

law, is a constitutionally mandated state function; and (3) 49 USC § 30106 circumvents the intent of New York Vehicle and Traffic Law § 388 (1), which provides plaintiffs, who are injured by operators of leased or rented vehicles, with the assurance that there will be a financially responsible party to provide compensation for negligent driving.

A party moving for summary judgment, pursuant to CPLR 3212, must demonstrate its entitlement thereto as a matter of law. To defeat summary judgment, the party opposing the motion must show that there is a material question of fact that requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, defendant has demonstrated its entitlement to summary judgment and plaintiff has failed to demonstrate that a material question of fact remains.

Vehicle and Traffic Law § 388 holds an owner of a vehicle that is used or operated in this state, liable for any injuries to a person resulting from the negligent operation or use of that motor vehicle. The statute 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 [1]). The legislation “expresses the policy that one injured by the negligent operation of a motor vehicle should have recourse to a financially responsible

defendant' [citations omitted]" (*Graham v Dunkley*, 50 AD3d 55 [2d Dept 2008]). New York, Maine, and Rhode Island are now the only states that have statutes purporting to impose vicarious liability for an unlimited amount of damages on car owners, including lessors (*id.*).

Vehicle and Traffic Law § 128 defines the term "owner" as :

"A person, other than a lien holder, having the property in or title to a vehicle or vessel. The term includes a person entitled to the use and possession of a vehicle or vessel subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle or vessel having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days."

New York courts have held that the owners of leased vehicles are vicariously liable under section 388 of the Vehicle and Traffic Law for the negligent operation of those vehicles (*see Litvak v Fabi*, 8 AD3d 631, 632 [2d Dept 2004]). Here, VW Credit does not dispute that it is the title owner of the 2002 Volkswagen Jetta sedan operated by Cipriani on the date of the accident. Thus, under Vehicle and Traffic Law § 388, VW Credit, as owner of the vehicle in question, is responsible for damages arising from Cipriani's negligent operation of the vehicle.

However, despite this precedent and the governing statute, VW Credit argues that federal law preempts its liability under section 388.

At issue here is 49 USC § 30106. 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 as 49 USC § 30106 (*Graham v Dunkley*, 50 AD3d 55, *supra*). The section entitled "Rented or leased motor vehicle safety and responsibility" provides:

"[a]n 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)”

(49 USC § 30106 [a]). This statute applies to all actions commenced on or after August 10, 2005 (see 49 USC § 30106 [c]). This action was commenced on July 27, 2006.

In the case at bar, plaintiffs do not dispute that VW Credit is in the business of renting motor vehicles, nor do they contend that VW Credit has acted negligently or criminally (49 USC § 30106 [a] [1], [2]). There is no question that the Graves Amendment preempts state laws that impose vicarious liability on businesses that rent or lease motor vehicles (see *Merchants Ins. Group v Mitsubishi Motor Credit Assn.*, 2008 WL 203195, * 3, 2008 U.S. Dist. LEXIS 4755, * 8 [ED NY 2008]). Moreover, the Graves Amendment has been enforced as preempting the vicarious liability imposed on commercial lessors by Vehicle and Traffic Law § 388 (*Graham v Dunkley*, 50 AD3d 55, *supra*; see *Hernandez v Sanchez*, 40 AD3d 446, 477 [1st Dept 2007]).

Contrary to plaintiff's arguments, the Graves Amendment does not fall outside the scope of Congress' power under the Commerce Clause of the Constitution. According to precedent, 49 USC § 30106 regulates an economic activity, the rental and lease of motor vehicles, and although it does so by preempting rules of state tort law, that does not render the legislation

unconstitutional (*id.*).

Article I, section 8 of the United States Constitution grants Congress broad power to enact legislation in several enumerated areas of national concern. Those laws enacted pursuant to a delegated power preempt conflicting state laws under the Supremacy Clause (US Const, art VI). The Supreme Court has identified “three broad categories of activity that Congress may regulate under its commerce power”:

“First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities.” Finally, Congress’ commerce authority includes the power to regulate those activities . . . that substantially affect interstate commerce”

(*United States v Lopez*, 514 US 549, 558-559 [1995]; *Flagler v Budget Rent a Car Sys., Inc.*, 538 F Supp 2d 557, 561 [ED NY 2008]).

“ Motor vehicles are ‘the quintessential instrumentalities of modern interstate commerce’ [citation omitted]” and “[t]he leasing market for vehicles is a national one’ [citation omitted]” (*Graham v Dunkley*, 50 AD3d 55 at 60). The Graves Amendment regulates an economic activity - the rental and lease of vehicles. As the appellate court stated, “[t]here 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” (*id.* at 61). Hence, the Graves Amendment is an exercise of Congress’ power to regulate and protect the instrumentalities of interstate commerce and things in interstate commerce, even though the threat may come only from intrastate activities (*id.*). Therefore, Congress may choose to preempt state liability

schemes in order to effectuate regulation of economic activities which affect interstate commerce (*id.*).

Accordingly, courts must defer to a congressional finding that a regulated activity affects interstate commerce, if there is any rational basis for such a finding (*id.*). The Appellate Division has held that the Graves Amendment falls within the second category of the commerce power because it “regulates both instrumentalities of, and things in, interstate commerce”(*id.* at 60). The Appellate Division has also held that the legislation in question falls within the third category of Congress’ powers because Congress had a rational basis to conclude that rentals and leases of automobiles, even in purely intrastate instances, have a substantial effect on interstate commerce (*id.*).

The Graves Amendment regulates the market for leased and rented motor vehicles, which are simultaneously instrumentalities of interstate commerce, things in interstate commerce, and part of a class of activities which substantially affect interstate commerce (*id.*). Consequently because Congress has, through the enactment of 49 USC § 30106, constitutionally preempted state laws imposing vicarious liability on companies that lease motor vehicles, plaintiffs cannot state cognizable claims against defendant VW Credit.

Accordingly, it is

ORDERED that defendant Volkswagen Credit Leasing, Ltd.’s motion for summary judgment is granted and the complaint is hereby severed and dismissed as against defendant Volkswagen Credit Leasing, Ltd. with costs and disbursements to defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED that the remainder of the action shall continue.

Dated: 5 / 15 / 08

ENTER:



J.S.C.

DONNA M. MILLS, J.S.C.

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