

**Pizzuto v Malissie**

2008 NY Slip Op 31907(U)

July 2, 2008

Supreme Court, Richmond County

Docket Number: 0104305/2007

Judge: Joseph J. Maltese

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND DCM PART 3

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Index No. 104305/07  
Motion No.:001

ANTHONY J. PIZZUTO,

*Plaintiff*

*against*

JULIA COLBRETH MALISSIE, and  
ELRAC, INC. d/b/a ENTERPRISE RENT-A-CAR  
COMPANY

*Defendants*

**DECISION & ORDER**

**HON. JOSEPH J. MALTESE**

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The following items were considered in the review of this motion to dismiss.

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

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

Defendants move pursuant to *CPLR* § 3211(a)(7) to dismiss plaintiff's claim based upon the application of 49 *USC* § 30106 known commonly as the Graves Amendment. Defendants' motion is denied in its entirety.

**Facts**

This action arises out of personal injuries allegedly sustained as a result of an automobile accident between the plaintiff and the defendant Malissie Julia Culbreth ("Culbreth"). Plaintiff alleges in his complaint that on April 25, 2007 Culbreth operated an automobile owned by defendant Elrac, Inc. ("Enterprise"). According to the complaint Culbreth's vehicle crossed the intersection of Church Avenue and Linden Boulevard in Brooklyn, New York and struck plaintiff's vehicle allegedly causing him personal injuries.

In his complaint plaintiff alleges boiler plate claims against the defendants sounding in negligence. Defendant, Enterprise argues that the complaint should be dismissed against it pursuant to the Graves Amendment that precludes car rental companies from being held vicariously liable for injuries caused by renters of its vehicles. Plaintiff argues that this motion is premature as discovery has not commenced.

### **Discussion**

Congress enacted the “Safe, Accountable, Flexible Efficient Transportation Equity Act- A Legacy for Users”<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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. . .<sup>3</sup>

The Appellate Division, Second Department recently upheld the Constitutionality of this

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<sup>2</sup> 49 U.S.C. 30106

<sup>3</sup> *Vehicle and Traffic Law* § 388

law when it reversed the decision of the Supreme Court in *Graham v. Dunkley*.<sup>4</sup> The Graves Amendment functionally abolished vicarious liability based solely on ownership for long term lessors and car rental companies.

Enterprise moves this court pre-answer to dismiss the plaintiff's claims against it. Plaintiff argues that this motion is premature as it has not been established that Enterprise did not act negligently in its maintenance or entrustment of the vehicle to Culbreth. In response to plaintiff's contention; defendant cites the decision of the Supreme Court of Suffolk County in *Hampson v. Gelco Corporation*.<sup>5</sup> The Supreme Court's decision in that case rests on the Appellate Division, Second Department's decision in *Jones v. Bill*.<sup>6</sup> The Supreme Court in *Hampson*, relying on the *Jones* decision found that a party seeking to add a party exempted under the Graves Amendment is required to ". . . allege facts sufficient to show that such a party was culpable for negligent and/or criminal acts."<sup>7</sup> The court in *Hampson* further indicated that

. . . the absence of such specific allegations as well as the absence of specific allegations regarding the failure to comply with state financial and insurance obligations, the court finds the holding in *Jones v. Bill (supra)* to be dispositive.<sup>8</sup>

This court respectfully disagrees with the interpretation of the *Jones* holding as articulated in the *Hampson* decision. As such, this court does not find that case to be persuasive. In the *Jones* case the Appellate Division affirmed the decision of the Supreme Court that found that the relation back doctrine did not apply to a newly added long term lessor defendant where the plaintiff interposed the claim after the August 10, 2005 enactment date of the Graves

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<sup>4</sup> *Graham v. Dunkley*, \_\_\_\_ AD3d \_\_\_\_ [2008]; 2008 N.Y. Slip Op 00958.

<sup>5</sup> *Hampson v. Gelco Corp.*, Sup Ct, Suffolk County, Feb. 1, 2007, index No. 22130/06.

<sup>6</sup> *Jones v. Bill*, 34 AD3d 741, 2d Dep't. [2006].

<sup>7</sup> *Hampson v. Gleco Corp. supra*

<sup>8</sup> *Id.*

Amendment. At no place in the Appellate Division's decision did it make reference: first, as to when a party allegedly protected under the Graves Amendment may bring a motion to dismiss claims; and second, it did not articulate a burden analysis.

Notwithstanding this court's disagreement with the Supreme Court of Suffolk County concerning the Appellate Division's holding in the *Jones* case, the Court of Appeals reversed the Appellate Division on June 5, 2008.<sup>9</sup> In its decision the Court of Appeals found that relation back doctrine applies to the Graves Amendment. Additionally, it reversed the Appellate Division's decision and allowed the plaintiff to bring an action against the long term car lessor. The importance of this decision is limited to those cases that plaintiffs filed on the eve of the enactment of the Graves Amendment. This is not the case here.

In the case before this court, defendant Enterprise did not answer plaintiff's complaint, nor did it demand a bill of particulars from plaintiff. The plain language of the Graves Amendment does not give long term lessors of automobiles or rental companies a carte blanche pass on all claims of vicarious liability. The statute clearly states that such a company is relieved of vicarious liability ". . . 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 . . ."<sup>10</sup> This court therefore agrees with plaintiff that defendant's motion is premature.

### **Conclusion**

At this early stage in the litigation process it is impossible for this court to determine that Enterprise is entitled to the protection of the Graves Amendment.

Accordingly, it is hereby:

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<sup>9</sup> *Jones v. Bill*, \_\_\_ NY3d \_\_\_, [2008], 2008 NY Slip Op. 04950

<sup>10</sup> 49 U.S.C. 30106

ORDERED, that defendants motion for an order pursuant to CPLR § 3211(a)(7) based on 49 U.S.C. § 30106 dismissing plaintiff's claims is denied in its entirety as premature; it is further

ORDERED, that defendants answer plaintiff's complaint within thirty (30) days of being served with notice of entry of this decision; it is further

ORDERED, that plaintiff shall move, or parties shall stipulate to amend this caption to reflect the proper names of the parties within thirty (30) days of the date of this decision; and it is further

ORDERED, that all parties return to **DCM Part 3 on August 27, 2008 at 9:30 A.M.** for a status conference.

ENTER,

DATED: July 2, 2008

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Joseph J. Maltese  
Justice of the Supreme Court