

Cassidy v DCFS Trust
2008 NY Slip Op 33622(U)
December 11, 2008
Supreme Court, New York County
Docket Number: 103369/08
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 22

JOSEPH J. CASSIDY,
Plaintiff,

INDEX NO. 103369/08

- v -

MOTION DATE _____

**DCFS TRUST, GILAD REALTY, INC. and
GUS E. KING**
Defendants.

MOTION SEQ. NO. 001

MOTION CAL. NO. 6

The following papers, numbered 1 to 3 were read on the motion by defendants DCFS TRUST and Gilad Realty, Inc., to dismiss the complaint as against it.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1

Answering Affidavits — Exhibits (Memo) _____

2

Replying Affidavits (Reply Memo)

3

Cross-Motion: Yes No

On or about May 20, 2005, plaintiff was in an automobile accident with a vehicle driven by the defendant Gus E. King and allegedly owned by defendants DCFS Trust and Gelad Realty, Inc. Plaintiff commenced this action by filing a Summons and Complaint to recover damages for personal injuries allegedly sustained in the motor vehicle accident. Plaintiff alleges that defendants DCFS Trust and Gelad Realty, Inc. were the owners/lessors/lessees of the vehicle which was being driven by defendant Gus E. King at the time of the subject accident. Plaintiff also alleges that defendant Gus E. King was employed by defendants DCFS Trust and Gelad Realty, Inc. The defendants DCFS Trust and Gelad Realty, Inc. now bring a motion to dismiss pursuant to CPLR § 3212 dismissing the complaint alleging primarily that the plaintiff is barred pursuant to 49 U.S.C. § 30106. The defendants DCFS Trust and Gelad Realty, Inc.

assert that the Transportation Equity Act of 2005, 49 U.S.C. § 30106, or so called "Graves Amendment," preempts the New York Vehicle and Traffic Law § 388.

The New York Vehicle and Traffic Law § 388, imposes vicarious liability upon the lessor of a vehicle for the negligence of the driver. The Graves Amendment, 49 U.S.C. § 30106, enacted on August 10, 2005, provides that "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)."

The Graves Amendment, in certain circumstances, preempts the Vehicle and Traffic Law § 388, vicarious liability on businesses that rent or lease motor vehicles. First, by the Application of the Supremacy Clause of Article IV of the United States Constitution (U.S.C.A. Const. Art. VI cl. 2; *Graham v Duckley*, 852 NYS2d 169 [2 Dept 2008], *appeal dismissed*, 10 NY3d 835 [2008]). Second, the New York State Court of Appeals has held to enforce the preemption of Vehicle and Traffic Law § 388 by the Graves Amendment (*see Graham v Duckley, supra; Johnson v Kling*, 854 NYS2d 648 [2 Dept 2008], *reversed on other grounds*, 10 NY3d 887 [2008]; *Hernandez v Sanchez*, 836 NYS2d 577 [1 Dept 2007]; *Kuryla v Halabi*, 835 NYS2d 230 [2 Dept 2007]; *Jones v Bill*, 825 NYS2d 508 [2 Dept 2006], *reversed on other grounds*, 10 NY3d 550 [2008]).

Third, this Court is further guided by the recent Federal Court decision in *Flagler v Budget Rent a Car Systems*, 538 F. Supp. 2d 557 [E.D.N.Y. 2008], citing *United States v Locke*, 529 U.S. 89, 109, 120 [2000], which found the Graves Amendment Constitutional.

In support of their motion, movants proffer an unsigned lease agreement, however, this agreement does not show who the lessor(s) of the vehicle is nor does it confirm that this lease refers to the vehicle named in the complaint. In addition, no affidavit is provided by movants to explain these deficiencies in the lease.

For these reasons and upon the foregoing papers, it is,

ORDERED that the motion of defendants DCFS Trust and Gelad Realty, Inc. for summary judgment to dismiss the complaint as against them is denied, with leave to renew upon proper papers, and it is further,

ORDERED that defendants DCFS Trust and Gelad Realty, Inc. shall serve a copy of this order, with notice of entry, upon all parties.



Dated: December 11, 2008

Paul Wooten
Paul Wooten J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST

FILED

JAN 14 2009