

**Yoon Young Lee v Rivera**

2009 NY Slip Op 31673(U)

July 23, 2009

Supreme Court, New York County

Docket Number: 107547/07

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

YOON YOUNG LEE,  
Plaintiff,

INDEX NO. 107547/07

MOTION DATE \_\_\_\_\_

- v -

ANGEL A. CORDONAR RIVERA,  
JOSE BENITEZ a/k/a JOSE L. PONCE,  
BENITE JOSE, JOSE LUCIO PONCE,  
JOSE L. BENITEZ, THE PONCE  
DYNASTY CORPORATION and JIFFY  
TRUCKING COMPANY,  
Defendants.

MOTION SEQ. NO. 003

MOTION CAL. NO. 86

The following papers, numbered 1 to 1 were read on this motion to reflect a special referee's report and recommendation.

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

Answering Affidavits — Exhibits (Memo) \_\_\_\_\_

Replying Affidavits (Reply Memo) \_\_\_\_\_

**FILED**  
JUL 28 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

PAGE	NUMBERED
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Cross-Motion:  Yes  No

On September 11, 2004 plaintiff was injured when he collided with the trailer portion of a tractor-trailer. At the time of the subject accident the tractor, operated by defendant Angel A. Cordonar, was carrying a trailer owned by defendant General Trading Grocery and Dairy. General Trading Grocery and Dairy, is the parent company of defendant Jiffy Trucking Company. Jiffy Trucking Company operates as the leasing company for General Trading Grocery and Dairy. Jiffy Trucking Company leased a trailer to defendants Ponce Dynasty Corporation and Jose L. Benitez, the independent owners of the tractor that was involved in the subject accident. Ponce Dynasty Corporation and Jose L. Benitez are the employers of Angel A. Cordonar, the operator of said tractor, that Jiffy's trailer was attached to, at the time of the subject accident.

The plaintiff commenced the two separate actions seeking damages for injuries allegedly sustained in the subject accident. On or about March 5, 2005, the first action, was commenced, against defendant Angel A. Cordonar Rivera, as the tractor-trailer operator and defendants Jose Benitez a/k/a Jose L. Ponce, Benite Jose, Jose Lucio Ponce, Jose L. Benitez and the Ponce Dynasty Corporation as the tractor-trailer owners, based upon vicarious liability, pursuant to New York Vehicle and Traffic Law § 388. On or about February 2, 2006, defendants answered the complaint in the first action and issue was joined.

On or about May 30, 2007, plaintiff commenced the second action (the instant action), requesting the same relief, against the same defendants as in the first action and added defendant Jiffy Trucking Company. Subsequently, plaintiff moved for a default judgment against Jiffy Trucking Company. Defendants Jiffy trucking Company cross-moved to dismiss the complaint, pursuant to CPLR § 3211 (a) and 49 U.S.C. §30106, ("The Graves Amendment"). Defendant Jiffy Trucking Company's cross motion was based upon its allegation that plaintiff's claim is barred by operation of The Graves Amendment, a federal law that preempts the state law on vicarious liability, for businesses that are "engaged in the trade or business of renting or leasing motor vehicles" (49 U.S.C. §30106).

By Court order dated February 8, 2008, the issue of "whether Jiffy Trucking Company falls under 49 U.S.C. § 30106, known as the Graves Amendment", was referred to a special referee to hear and report. The matter was heard by Sue Ann Hoahng, Special Referee, who thereafter issued a Report and Recommendation, dated

September 2, 2008. The Special Referee's Report set forth her findings of fact and conclusions of law and recommended that the Graves Amendment is not applicable in the instant case. Defendant Jiffy Trucking Company now moves to reject the Special Referee's report dated September 2, 2008, pursuant to CPLR § 4403.

In her report, the Special Referee concluded that the Graves Amendment is inapplicable in this case, primarily upon her determination that Jiffy Trucking Company is owned by General Trading Grocery and upon the testimony of Lawrence Ruh, an employee for General Trading Grocery and Dairy. Lawrence Ruh testified, *inter alia*, that Jiffy Trucking Company was created by General Trading Grocery and Dairy, for the purpose of "delivering General Trading's groceries"<sup>1</sup>. Jiffy Trucking Company's tractors are leased, only for the purpose of delivering groceries to General Trading Grocery and Dairy's customers, a tractor cannot be rented from Jiffy Trucking Company for any other purpose. Thus, the Special Referee determined, that Jiffy Trucking Company is not merely in the business of leasing and or renting motor vehicles, and the Graves Amendment is inapplicable.<sup>2</sup>

The Court also concludes that the Graves Amendment is inapplicable in this case. However, the Court's conclusion is based upon a different finding than those listed in the Special Referee's report.

The Graves Amendment, 49 U.S.C. § 30106, provides in pertinent part 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

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<sup>1</sup>See Special Referee's report, page 13, footnote 5.

<sup>2</sup>See Special Referee's report, page 13.

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 New York Vehicle and Traffic Law § 388, imposes vicarious liability upon the lessor of a vehicle for the negligence of the driver. In certain circumstances the Graves Amendment preempts the Vehicle and Traffic Law § 388. By application of the Supremacy Clause of Article IV of the United States Constitution, the New York State Court of Appeals has held that the preemption of Vehicle and Traffic Law § 388 by the Graves Amendment, is constitutional (U.S.C.A. Const. Art. VI cl. 2; *Hernandez v Sanchez*, 836 NYS2d 577 [1 Dept 2007; *Graham v Duckley*, 852 NYS2d 169 [2 Dept 2008], *appeal dismissed*, 10 NY3d 835 [2008]; *Johnson v Kling*, 854 NYS2d 648 [2 Dept 2008], *reversed on other grounds*, 10 NY3d 887 [2008];]; *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]).

Lawrence Ruh testified that, in his industry, a tractor is defined as the “front [truck] part” of the tractor-trailer and a trailer is defined the back container part, the part with “no motor”<sup>3</sup>. Lawrence Ruh also testified, that the equipment leased to Ponce Dynasty Corporation, by Jiffy Trucking Company, was “just a trailer”<sup>4</sup>.

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<sup>3</sup>Lawrence Ruh's testimony page 43, lines 14-15.

<sup>4</sup>See the transcript from the Special Referee hearing, page37, line 23.

The Owner-Operator Agreement<sup>5</sup> between Jiffy Trucking Company and Ponce Dynasty Corporation states in part :

" . . . Jiffy is . . . engaged in the business of providing *delivery equipment* and delivery services . . ." ( emphasis added).

Jiffy Trucking Company is in the business of leasing *trailers*. The tractor is the means by which the trailer is moved from one location to another in order to deliver General Trading's groceries. As Lawrence Ruh testified, a trailer has "no motor"<sup>6</sup>. The tractor, owned by defendant Ponce Dynasty Corporation and Jose Benitez, is the motor vehicle.

"As a general proposition, we need not look further than the unambiguous language of the statute to discern its meaning" (*Jones v Bill*, 10 NY3d 550, 554 [2008]; see *Riley v County of Broome*, 95 NY2d 455, 463, 742 NE2d 98, 719 NYS2d 623 [2000]). Accordingly, since Jiffy Trucking Company is not "engaged in the business of renting or leasing *motor vehicles*", the Graves Amendment is inapplicable (49 U.S.C. § 30106 [emphasis added]). There no indication in the language or legislative history of the statute, that requires the Graves Amendment to be applied to "delivery equipment" that does not contain a motor.

Accordingly, the report dated September 2, 2008, of Sue Ann Hoahng, Special Referee, is confirmed.

Upon the foregoing papers, it is

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<sup>5</sup>See defendant Jiffy's cross motion to plaintiff's motion for a default judgment, exhibit I-1.

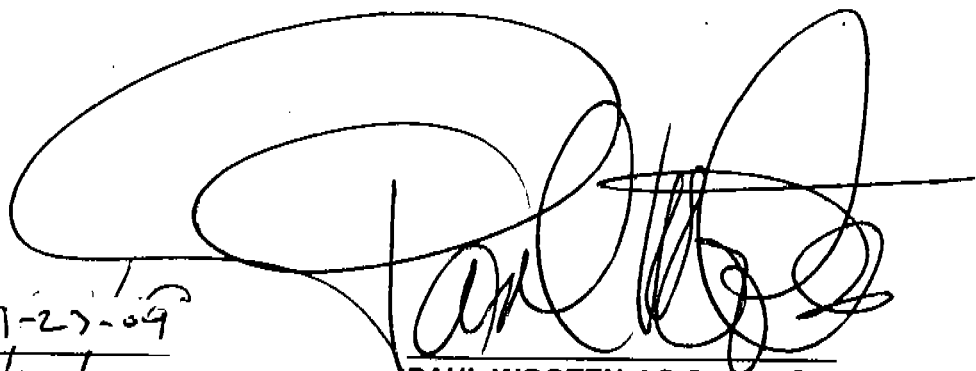
<sup>6</sup>Lawrence Ruh's testimony page 43, lines 14-15.

ORDERED that motion by defendant Jiffy Trucking Company, to reject Special Referee's Report dated September 2, 2008, is hereby denied, and it is further,

ORDERED that defendant Jiffy Trucking Company shall serve a copy of this order with notice of entry upon all parties, the County Clerk, and the Clerk of the Trial Support Office within 45 days of entry.

This constitutes the Decision and Order of the Court.

**FILED**  
JUL 28 2009  
COUNTY CLERK'S OFFICE  
NEW YORK



Dated: 7-23-09  
JUL 23 2009

PAUL WOOTEN **Paul Wooten**  
J.S.O.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE