

Asaduzzaman v Victor Savitsky & J & B Rentals, Inc.
2014 NY Slip Op 33544(U)
August 4, 2014
Supreme Court, Queens County
Docket Number: 19716/2013
Judge: Robert J. McDonald
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

OS

SHORT FORM ORDER.

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

ORIGINAL

----- x

MOHAMMAD ASADUZZAMAN and
PARVIN RAHMAN,

Index No.: 19716/2013

Motion Date: 07/21/14

Plaintiffs,

Motion No.: 6

- against -

Motion Seq.: 1

FILED

VICTOR SAVITSKY and J & B RENTALS,
INC.,

AUG 21 2014

**COUNTY CLERK
QUEENS COUNTY**

Defendants.

----- x

The following papers numbered 1 to 12 were read on this motion by defendant, J & B RENTALS, INC., for an order pursuant to CPLR 3211(a)(7) dismissing the plaintiff's complaint against it on the ground that under the Federal Transportation Act a leasing/rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	1 - 6
Affirmation in Opposition-Affidavits-Exhibits.....	7 - 9
Reply Affirmation-Exhibits.....	10 - 12

On June 6, 2013, plaintiff, Mohammad Asaduzzaman, was involved in a two vehicle accident with a vehicle operated by the defendant Victor Savitsky, and owned by defendant, J & B Rentals, Inc. At the time of the accident, Mr. Savitsky was operating a vehicle that he leased from J & B Rentals, Inc. The accident occurred on the Westbound Brooklyn-Queens Expressway at or near the Kosciuszko Bridge, Exit 34, Kings County, New York.

FILED

AUG 21 2014

**COUNTY CLERK
QUEENS COUNTY**

Plaintiff, Mohammad Asaduzzaman, commenced this action by way of a summons and complaint filed on October 24, 2013 to recover damages for personal injuries allegedly sustained by him in the subject motor vehicle accident. The basis for a claim against J & B Rentals, Inc. is Vehicle and Traffic Law § 388, which imposes vicarious liability upon the lessor of a vehicle for the negligence of the driver.

Defendant, J & B Rentals, Inc. now moves for an order dismissing the complaint against it, pursuant to CPLR § 3211(a)(7), alleging that under the Federal Transportation Equity Act of 2005, 49 U.S.C. § 30106, commonly known as the "Graves Amendment," a leasing/rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter, its employees or agents. J & B Rentals, Inc. asserts that the Graves Amendment preempts New York Vehicle and Traffic Law § 388.

In support of its motion, J & B Rentals, Inc. submits an affidavit from Joanne Grieco, General Manager of defendant, J & B Rentals, Inc., dated June 18, 2014, stating that at the time of the subject accident, J & B Rentals, Inc. was engaged in the business of renting motor vehicles pursuant to written rental agreements. She states that on June 6, 2013, J & B Rentals, Inc. was the owner of the 2012 Ford Van which was rented to defendant Richard Savitsky. A copy of the written rental agreement is annexed to the motion papers. Ms. Grieco states that Victor Savitsky was not an employee, servant or agent of J & B Rentals, Inc. She states that there were no complaints relating to the performance of said vehicle.

In his affidavit in support of the motion, counsel for J & B Rentals, Inc., Daniel P. McCabe, Esq., states that pursuant to the Graves Amendment, as J & B Rentals, Inc. is a rental company, it is not vicariously liable under VTL § 388 and therefore, the complaint fails to state a cause of action (citing Kuryla v Halabi, 39 AD3d 485 [2d Dept. 2007]; William v White, 40 AD3d 110 [4th Dept. 2007]).

In partial opposition, plaintiff's counsel, Michael J. Mutarelli, Esq. concedes that the defendant, J & B Rentals, Inc., should be granted a dismissal as a matter of law based upon the applicable provisions of the Graves Amendment. However, plaintiff states that the motion should not be granted as against the defendant driver, Victor Savitsky, as the Graves Amendment does not apply to the operator of the vehicle, only the owner thereof.

In its reply affirmation, counsel for J & B Rentals, Inc. asserts that his motion only seeks dismissal of the action against J & B Rentals, Inc., not both of the defendants.

The Transportation Equity Act of 2005 (49 USC § 30106) provides in pertinent part:

§ 30106 Rented or Leased Motor Vehicle Safety and Responsibility.

"(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)"

Upon review and consideration of the defendant's motion, the plaintiff's affirmation in partial opposition and the defendants' reply thereto, this court finds as follows:

It has now been determined that the Graves Amendment preempts all state statutes to the extent they hold those owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner.

There is no dispute that J & B Rentals, Inc. is a leasing company and therefore cannot be held liable for leasing the vehicle in question. The Court finds that J & B Rentals, Inc. has provided sufficient evidence to demonstrate that the Graves Amendment is applicable to the rental of the vehicle under the Rental Agreement in that J & B Rentals, Inc. is an owner engaged in the trade or business of renting or leasing motor vehicles.

Therefore, the motion by J & B Rentals, Inc., to dismiss the plaintiff's complaint based solely on vicarious liability against said defendant, is granted on consent of the plaintiff and pursuant to CPLR 3211(a)(7) as that claim fails to state a cause of action (see Burrell v Barreiro, 83 AD3d 984 [2d Dept. 2011]; Byrne v Collins, 77 AD3d 782 [2d Dept. 2010]; Gluck v Nebgen, 72 AD3d 1023 [2d Dept. 2010]).

Accordingly, for all of the above stated reasons it is hereby,

ORDERED, that the Clerk of Court is directed to enter judgment in favor of defendant, J & B Rentals, Inc., dismissing the plaintiff's complaint as to defendant J & B Rentals, Inc. only.

Dated: August 4, 2014
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

FILED
AUG 21 2014
COUNTY CLERK
QUEENS COUNTY

FILED
AUG 21 2014
COUNTY CLERK
QUEENS COUNTY