

Zaraei v Saini

2016 NY Slip Op 31141(U)

May 12, 2016

Supreme Court, Queens County

Docket Number: 709679/2015

Judge: Salvatore J. Modica

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

HONORABLE SALVATORE J. MODICA

NOOR A. ZARAEI, x I Part 37
Index
Number 709679 2015

Plaintiff,

-against-

Motion
Date February 17, 2016

HARBHAJAN S. SAINI AND NISSAN INFINITI LT,
NILT INC. TRUSTEE,

Defendants.

Motion Seq. No. 1

FILED
MAY 20 2016
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 9 read on this motion by defendants, Nissan-Infiniti LT and NILT Inc Trustee (NILT and NILT, Inc.), for summary judgment dismissing the complaint as against them, pursuant to CPLR 3211 (a) (7) and 49 USC 30106.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavit - Exhibits	1-4
Answering Affirmation.....	5-6
Reply Affidavit - Exhibits	7-9

Upon the foregoing papers, it is ordered that the motion is determined as follows:

In this action arising from a motor vehicle accident on July 28, 2015, in which a motor vehicle owned by the moving defendants, and operated by defendant, Harbhajan S. Saini, came into contact with a motor vehicle operated by plaintiff, defendants, NILT and NILT, Inc., move for summary judgment based on plaintiff's failure to state a cause of action, predicated on 49 USC 30106.

Moving defendants contend that 49 U.S.C. 30106 (Graves Amendment) applies herein, removing NILT and NILT, Inc. from vicarious liability for the negligence of the operator, Saini. Said defendants assert, and demonstrate, that they are professional lessors of motor vehicles, that they own the subject motor vehicle, and that there were no allegations of direct negligence against them in the complaint.

Plaintiff opposes, contending, only, that movants have failed to demonstrate that the accident was not caused by "a mechanical malfunction or difficulty with the leased motor vehicle," and a lack of negligence on their part in the maintenance of the vehicle, as required by the Graves

Amendment. The Court notes that plaintiff's complaint fails to state that moving defendants were negligent in the "maintenance" of the motor vehicle. Defendants' answer includes an affirmative defense of the Graves Amendment.

On a motion to dismiss a complaint for failure to state a cause of action, the factual allegations of the complaint must be deemed to be true, and the non-moving parties must be accorded the benefit of every favorable inference from the facts alleged (*see Cron v Hargro Fabrics*, 91 NY2d 362 [1998]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Guggenheimer v. Ginzburg*, 43 NY2d 268 [1977]). When evidentiary material is submitted in support of a motion to dismiss for failure to state a cause of action, dismissal is warranted only where the evidence conclusively establishes that a material fact alleged by the plaintiff is not a fact at all and that no significant dispute exists regarding it (*see Guggenheimer, supra*; *1911 Richmond Avenue Assocs., LLC v G.L.G. Capital, LLC*, 60 AD3d 1021 [2009]; *Sta-Brite Servs. v Sutton*, 17 AD3d 570 [2005]; *Allstate Ins. Co. v Raguzin*, 12 AD3d 468 [2004]).

The Graves Amendment preempts the vicarious liability imposed on commercial lessors by Vehicle and Traffic Law § 388 (*see Eisenberg v Cope Bestway Exp., Inc.*, 131 AD3d 1198 [2015]; *Gluck v Nebgen*, 72 AD3d 1023 [2010]; *Graham v Dunkley*, 50 AD3d 55 [2008]). To be eligible for the protection provided by the Graves Amendment, the statute requires that the owner of the vehicle be "engaged in the trade or business of renting or leasing motor vehicles" and that "there is no negligence or criminal wrongdoing on the part of the owner" (49 USC 30106 [a] [1]).

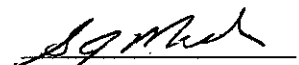
Moving defendants have substantiated, through the affidavit of the supervisor of their servicer, the submitted contract and title records, that they were the owner and assignee of the subject vehicle, were engaged in the business of renting and/or leasing motor vehicles, and no allegations of direct negligence were asserted against them (*see Burrell v Barriero*, 83 AD3d 984 [2011]; *Byrne v Collins*, 77 AD3d 782 [2010]; *Gluck v Nebgen*, 72 AD3d 1023 [2010]). Further, movants showed that they did "not engage in the repair, maintenance, delivery, service, operation, management, possession, supervision, control, or inspection" of the subject leased vehicle, and that defendant, Saini, was contractually responsible for maintenance of the leased vehicle. Additionally, plaintiff has failed to allege facts demonstrating that said defendants improperly maintained the subject vehicle. Absent evidence of improper maintenance, the negligence clause of the Graves Amendment is rarely applicable "in light of Congress' clear intent to forestall suits against vehicle leasing companies" (*Colon v Bernabe*, No. 07-cv-03369, 2007 U.S. Dist. LEXIS 51981, 2007 WL 2068093 [S.D.N.Y. July 19, 2007]).

Accordingly, plaintiff has failed to state a viable cause of action against moving defendants, and pursuant to the Graves Amendment, NILT and NILT, Inc. are entitled to dismissal of the action against them (*see Burrell v Barriero*, 83 AD3d 984).

Plaintiff's remaining contentions and arguments, involving alleged inadequacies in movants' supporting affidavits, are found to be without merit.

Accordingly, NILT and NILT, Inc's motion seeking dismissal of plaintiff's complaint against them is granted (49 U.S.C. 30106).

Dated: May 12, 2016


Salvatore J. Modica

FILED
MAY 20 2016
COUNTY CLERK
QUEENS COUNTY