

Bass v Toyota Lease Trust

2018 NY Slip Op 34496(U)

March 30, 2018

Supreme Court, Bronx County

Docket Number: Index No. 30350/2017E

Judge: Howard H. Sherman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

Part 4

-----x
Tammy Bass

Plaintiff

Decision and Order

Index No. 30350/2017e

-against-

**Toyota Lease Trust,
Anthony L. Spinelli and John J. Spinelli**

Defendants

Howard H. Sherman
J.S.C.

-----x
The following papers numbered 1-4 read on this motion by **Toyota Lease Trust** for an order pursuant to CPLR § 3211(a)(7) dismissing the action and cross-claims submitted March 27, 2018

Notice of Motion - Affirmation and Exhibits 1-3	1	
Memorandum of Law in Support of Motion , Exhibits 1-3	2	
Affirmation in Opposition	3	
Affidavit in Reply, Exhibit A	4	

Upon the foregoing papers this motion by defendant Toyota Lease Trust (TLT) for an order pursuant to CPLR § 3211(a)(7) dismissing the complaint and all cross-claims as asserted against it and severing the dismissed action, is granted to the extent set forth below.

Plaintiff commenced this action seeking damages for personal injuries alleged to have been sustained in a two-vehicle collision that occurred on July 15, 2017 . Issue was joined by service of TLT’s answer in November. Anthony L. Spinelli and John J. Spinelli (Spinelli Defendants) interposed their answer in January 2018 in which a cross-claim for indemnification/contribution is asserted.

No Note of Issue has been filed .

Motion

TLT now moves to dismiss the amended complaint and the cross-claim on the grounds that the vicarious liability claim is pre-empted by operation of the Graves Amendment (see 49 U.S.C. § 30106[a]), and the boilerplate negligent maintenance claim fails state a cause of action because TLT does not engage in the maintenance , service or repair of vehicles leased through authorized Toyota dealerships.

Plaintiff opposes the motion noting that the Spinelli Defendants have failed to execute a stipulation discontinuing the action against TLT , “and waiving the opportunity to assert in the future an affirmative defense of mechanical defect.”

In reply, TLT notes that the complaint asserts no claim of a mechanical defect , and the attempt to raise this new theory of liability for the first time by way of an attorney affirmation is improper.

Discussion and Conclusions

The established “sole” criteria for the court’s consideration of a motion to dismiss a complaint pursuant to CPLR 3211 (a)(7) , “ is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (see Foley v D’Agostino, 21 AD2d 60, 64-65; Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 3211:24, p 31; 4 Weinstein-Korn-Miller, NY Civ Prac,

par 3211.36). “ Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 , 372 N.E.2d 17 [1977]

To this end, the court is required to “ liberally construe the complaint (see e.g. Leon v Martinez, 84 NY2d 83, 87, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]; CPLR 3026), and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion (see Sokoloff v Harriman Estates Dev. Corp., 96 N.Y.2d 409, 414, 729 N.Y.S.2d 425, 754 N.E.2d 184 [2001] [collecting cases]; Wieder v Skala, 80 NY2d 628, 631, 609 N.E.2d 105, 593 N.Y.S.2d 752 [1992]) “ , according plaintiff “ the benefit of every possible favorable inference (see Sokoloff, 96 N.Y.2d at 414, 729 N.Y.S.2d 425, 754 N.E.2d 184). “ 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152, 773 N.E.2d 496 [2002] ; see also, Toth v. New York City Dept. of Citywide Admin. Servs., 119 A.D.3d 431, 988 N.Y.S.2d 488 [1st Dept. 2014] . The question of “[w]hether a plaintiff . . . can ultimately establish its allegations *is not taken into consideration* in determining a motion to dismiss” (*Philips S. Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 497, 867 NYS2d 386 [1st Dept 2008] [emphasis added], lv denied 12 NY3d 713, 910 NE2d 430, 882 NYS2d 682 [2009]). “ African Diaspora Mar. Corp. v. Golden Gate Yacht Club, 109 A.D.3d 204, 211, 968 N.Y.S.2d 459 [1st Dept. 2009]

Upon review of the submissions here, including the pleadings, and the Notices to Admit , and the lease agreement between the dealership and Anthony Spinelli [Exhibit C], and the New York State Department of Motor Vehicle ownership

identification for the subject vehicle [Exhibit D], and the police accident report [Exhibit B], and the affidavit of the moving defendant's Lease Collection Manager [Exhibit K], the court finds that TLT showed that it was the tile owner and assignee lessor of the subject vehicle and that it is engaged in the business of renting or leasing motor vehicles and that neither John nor Anthony Spinelli was an agent, or employee of TLT nor that the former was acting within the authority or scope of such employment at the time of the accident. Accordingly, to the extent that the complaint asserted that TLT was vicariously liable for John Spinelli's allegedly negligent operation of the leased vehicle based solely on its ownership of the vehicle, such a claim is barred by 49 USC § 30106(a).

Additionally, to the extent that the plaintiff claims that TLT negligently maintained the subject vehicle, TLT "established that the alleged facts were not facts at all through its submissions showing that it did not engage in the repair and maintenance of the vehicles it leases (see *Guggenheimer v. Ginzburg*, 43 N.Y.2d at 275, 401 N.Y.S.2d 182, 372 N.E.2d 17, see also *Khan v. MMCA Lease, Ltd.*, 100 A.D.3d at 834, 954 N.Y.S.2d 595; *Gluck v. Nebgen*, 72 A.D.3d at 1023, 898 N.Y.S.2d 881). " *Aviaev v. Nissan Infiniti LT*, 150 A.D.3d 807, 55 N.Y.S.3d 297 [2d Dept. 2017]

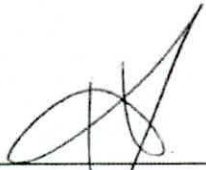
Accordingly, it is

ORDERED that the motion be and hereby is granted, and it is

ORDERED that judgment be entered in favor of **Toyota Lease Trust** dismissing the complaint and the cross-claim asserted against it in the above-entitled action.

This shall constitute the decision and order of this court.

Dated : March 30, 2018



Howard H. Sherman