

**Cuevas v Sciacca**

2019 NY Slip Op 30196(U)

January 2, 2019

Supreme Court, Kings County

Docket Number: 506690/2016

Judge: Richard Velasquez

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**FILED**  
JAN 22 2019  
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2<sup>ND</sup> day of January, 2019.

PRESENT:  
HON. RICHARD VELASQUEZ  
Justice.

-----X  
JUMEL CUEVAS and ARIANNA GUERRERO,

Plaintiff,

Index No.: 506690/2016

-against-

Decision and Order

FRANK P. SCIACCA, USB LEASING LT. and  
FRANK R. SCIACCA,

Defendants.

-----X

The following papers numbered 1 to 3 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	1
Opposing Affidavits (Affirmations) _____	2
Reply Affidavits (Affirmations) _____	3

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After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant, USB LEASING LT. (hereinafter USB), moves to dismiss the complaint with prejudice pursuant to CPLR 3211 on the grounds that the action is barred by the Federal Statute 49 U.S.C.A. Section 30106. Plaintiff opposes the same.

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### **Facts/Procedural History**

Plaintiff brings this action for personal injuries allegedly arising from a motor vehicle accident that occurred on December 25, 2015. The alleged incident occurred when defendant FRANK P. SCIACCA operating a 2015 Cadillac automobile owned by defendant USB and leased by Frank R. Sciacca struck plaintiffs while they were crossing the street in the crosswalk.

On April 25, 2016 plaintiff Cuevas, commenced this action with service of a Summons and Verified Complaint on defendants. Issue was joined on or about June 8, 2016 by service of an Answer. On August 17, 2016 plaintiff ARIANNA GUERRERO, commenced an action by Service of Summons and Complaint on the defendants. Issue was joined on or about October 7, 2016 by service of an answer. On October 7, 2016 by Notice of Motion defendant USB made its first motion to dismiss CPLR 3211 based on the Graves amendment. Defendant USB later withdrew this motion. By order dated June 21, 2017 the Cuevas action and the Guerrero action were consolidated into one action. By Notice of Motion dated December 11, 2017 defendant USB made it second motion to dismiss the complaint against it pursuant to CPLR 3211 on the Graves Amendment. By order dated May 2, 2018 the motion to dismiss was denied by this Court.

### **Arguments**

Defendant's contend the facts as alleged by plaintiff, do not fit within any cognizable legal theory imputing liability to a commercial lessor, based on the application of Federal Law 49 USC 30106 (i.e. they are protected by the Graves Amendment because they are in the business of leasing cars).

In opposition, plaintiffs contend defendants have not established that they are a leasing company, so as to afford it the protection of the Graves Amendment. Further, plaintiff argues that present motion is barred by the single motion rule and the defendants have already filed a motion pursuant to CPLR 3211 that was decided on the merits and as such this motion must be denied.

### Analysis

Pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Morone v. Morone*, 50 NY2d 481, 484, 429 NYS2d 592, 413 NE2d 1154; *Rovello v. Orofino Realty Co.*, 40 NY2d 633, 634, 389 NYS2d 314, 357 NE2d 970). In assessing a motion under CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (*Rovello v. Orofino Realty Co.*, 40 NY2d at 635, 389 NYS2d 314, 357 NE2d 970) and **“the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one”** (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275, 401 NYS2d 182, 372 NE2d 17; *Rovello v. Orofino Realty Co.*, 40 NY2d at 636, 389 NYS2d 314, 357 NE2d 970). “[B]are legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion” (*Palazzolo v. Herrick, Feinstein, LLP*, 298 AD2d 372, 751 NYS2d 401). If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(7) is warranted even if the allegations, standing alone, could withstand a motion to dismiss

for failure to state a cause of action (see *McGuire v. Sterling Doubleday Enters., LP*, 19 AD3d 660, 661, 799 NYS2d 65).

The Graves Amendment provides; “(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)” (49 USC § 30106 [a] [1], [2]). “The legislative history of the Graves Amendment indicates that it was intended to ‘protect the vehicle rental and leasing industry against claims for vicarious liability where the leasing or rental company's only relation to the claim was that it was the technical owner of the [vehicle]’ ” (*Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 893 [2015], quoting *Rein v CAB E. LLC*, 2009 WL 1748905, 2009 US Dist LEXIS 52617, [SD NY, No. 08 Civ 2899 (PAC)], citing *Statement of Representative Graves*, 151 Cong Rec H1034, H1200 [Mar. 9, 2005]).

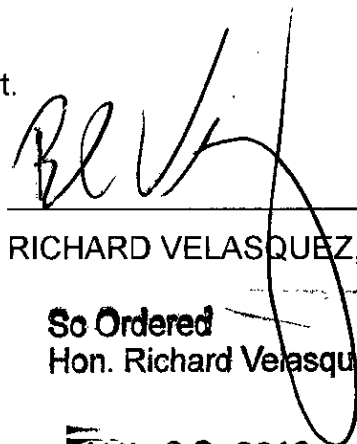
In the present case, it is clear, the defendants have previously filed a motion to dismiss based on the Graves Amendment. The single motion rule prohibits parties from making successive motions to dismiss a pleading (see CPLR 3211 [e]; *Held v Kaufman*, 91 NY2d 425, 430 [1998]; *Klein v Gutman*, 12 AD3d 417, 419 [2004]; *B.S.L. One Owners Corp. v Key Intl. Mfg.*, 225 AD2d 643, 644 [1996]). Therefore, although a “motion based on the ground that the complaint fails to state a cause of action may be raised at any time,

a party may not make a second motion pursuant to CPLR 3211 based on that ground, but must raise the ground "in another form" (*McLearn v Cowen & Co.*, 60 NY2d 686, 689 [1983]; see CPLR 3211 [e]); quoting *Ramos v. City of New York*, 51 A.D.3d 753, 754, 858 N.Y.S.2d 702 (2008). In the present case, although the first motion to dismiss that was filed by the defendants was withdrawn. The defendants filed a second motion to dismiss, which was decided on the merits and ultimately denied. Therefore, the defendants current motion to dismiss must be denied pursuant to the single motion rule. In addition, the defendants motion must be denied as the defendant fails to submit admissible evidence in support of its motion. Among other factors, the defendant has not established that it is engaged in the business of leasing or renting vehicles; that there is a lack of negligence or wrongdoing; the maintenance record of said vehicle establishing it was maintained in good working condition.

Accordingly, Defendants motion to dismiss is hereby denied in its entirety as the single motion rule applies, and for reasons stated above.

This constitutes the Decision/Order of the Court.

Date: January 2, 2019



RICHARD VELASQUEZ, J.S.C.

So Ordered  
Hon. Richard Velasquez

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