

**Hernandez-Ortiz v Rivera-Souffront**

2019 NY Slip Op 35090(U)

October 3, 2019

Supreme Court, Queens County

Docket Number: Index No. 709130/2019

Judge: Bruce M. Balter

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This opinion is uncorrected and not selected for official publication.

At Part 42 of the Supreme Court of the State of New York, held in and for the County of QUEENS at the Courthouse thereof, 25-10 Court Square, L.I.C., NY 11101 on the 3<sup>rd</sup> day of October, 2019.

PRE SENT:  
BRUCE M. BALTER, J.S.C.

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HECTOR HERNANDEZ-ORTIZ, X

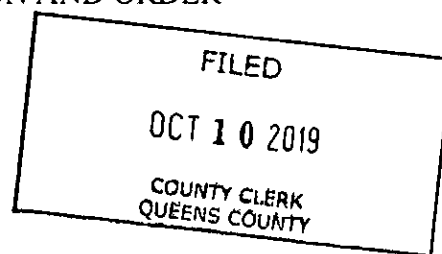
Plaintiff,

Index #: 709130/2019  
Motion Calendar #: 2  
Motion Sequence #: 1

DECISION AND ORDER

-against-  
CRISTIAN RIVERA-SOUFFRONT and FAIR  
TITLING TRUST,

Defendants.



\_\_\_\_\_  
X  
Defendant FAIR TITLING TRUST motion for an order: (1) Pursuant to CPLR §3211(a)(1) for a dismissal founded upon documentary evidence, as the policy of insurance and the Affirmation of Marc Bonnanni clearly set forth that CHRISTIAN RIVERA- SOUFFRONT entered into a lease agreement with FAIR TITLING TRUST, in which CHRISTIAN RIVERA-SOUFFRONT agreed to indemnify FAIR TITLING TRUST; and (2) Pursuant to CPLR § 3211(a)(7), dismissing with prejudice plaintiff's Summons and Complaint as against FAIR TITLING TRUST for failure to state a cause of action upon which relief may be granted on the grounds that 49 U.S. Code §30106 (commonly known as the "Graves Amendment") preempts and abolishes any cause of action that the plaintiff may have against the moving defendant; and, (3) Sanctioning plaintiff for the filing of a frivolous lawsuit; and (4) Granting such other and further relief as this Court deems just, proper, and equitable.

In consideration of the motion, the Court has considered the oral arguments presented to the Court, the moving papers, exhibits, affirmation in opposition and reply.

This case arises from an alleged motor vehicle accident which occurred on January 19, 2019, near the intersection of 76<sup>th</sup> Street and 86<sup>th</sup> Road in the County of Queens. Plaintiff alleges that his vehicle was rear-ended by the vehicle driven by defendant CHRISTIAN RIVERA- SOUFFRONT (hereafter "SOUFFRANT") and owned by defendant FAIR TITLING TRUST.

Defendant seeks dismissal of plaintiff's Summons and Complaint as against FAIR TITLING TRUST on the basis that plaintiff's alleged injuries were not due to any negligence on the part of FAIR TITLING TRUST, and FAIR TITLING TRUST cannot be held vicariously liable for plaintiff's injuries by virtue of being the vehicle owner pursuant to the Graves Amendment. Moreover, SOUFFRONT, was the registered owner of the vehicle. Plaintiff opposes the motion.

#### PROCEDURAL HISTORY

Plaintiff commenced this action by the filing of a Summons and Verified Complaint on or about May 24, 2019. SOUFFRONT is the registered owner of the vehicle and responsible for the maintenance thereof. The subject vehicle was leased by FAIR TITLING TRUST pursuant to the terms of the lease agreement. SOUFFRONT entered into a lease agreement with FAIR TITLING TRUST for use of a 2015 Infiniti Q50 Sedan AWD, bearing Vehicle Identification Number "JN1BV7AR1FM402159". The vehicle registration confirms that FAIR TITLING TRUST is the lessor and SOUFFRONT is the lessee. The lease is dated December 19, 2018. On the date of the alleged accident, January 19, 2019, the lease was still in effect. Pursuant to the lease, Christian Rivera-Souffront agreed to indemnify FAIR TITLING TRUST for all losses, damages, claims, injuries and expenses, which might result from the lease or use or operation of the vehicle.

#### ANALYSIS

Plaintiff's complaint fails to state a cause of action against FAIR TITLING TRUST as they cannot be held liable in this action pursuant to the Graves Amendment. CPLR §3211(a) provides in pertinent part:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: (1) a defense is founded upon documentary evidence;

On a motion to dismiss, pursuant to CPLR §3211(a)(7) for failure to state a cause of action, courts are concerned with whether a pleading states a cause of action rather than the ultimate determination of the facts. See *Stukuls v. State*, 42 N.Y.2d 272 (1977) citing *Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633 (1976). Thus, even if the court considers the plaintiff's allegations in his complaint to be true, if the plaintiff does not have a legally cognizable cause of action upon which relief may be granted, the court must dismiss the complaint insofar as it asserts a cause of action against FAIR TITLING TRUST. Furthermore, 39 U.S.C. § 30106 preempts New York's vicarious liability statute, Section 388 of the Vehicle and Traffic Law, and thus deprives New York State courts of jurisdiction to hear a cause of action premised on said statute.

In the case at Bar, the moving defendant has come forward with proof in admissible form that it was not in possession of the subject vehicle operated by SOUFFRONT at the time of the accident. Thus, FAIR TITLING TRUST was no more than an out-of-possession lessor of the motor vehicle in question. Likewise, FAIR TITLING TRUST has submitted the sworn affidavit of Marc Bonnanni in which he avers that FAIR TITLING TRUST was, at all times relevant hereto, a company engaged in the business of leasing and renting motor vehicles, and is therefore entitled to the protection of the Graves Amendment.

Pursuant to the Graves Amendment, FAIR TITLING TRUST may not be held vicariously liable for the alleged negligence of any lessee/rentee or any permissible driver of a leased/rented vehicle. The Graves Amendment preempts all state laws holding motor vehicle owners vicariously liable for the negligence of a driver, provided that the owner is engaged in the business of renting or leasing motor vehicles. Courts have held the Graves Amendment to be constitutional and to preempt New York's vicarious liability law as it applies to companies, like FAIR TITLING TRUST, engaged in the business of leasing or renting automobiles. See *Kuryla v. Halabi*, 39 A.D.3d 485 (2<sup>nd</sup> Dept. 2007)

Pursuant to Section 388 of New York's Vehicle and Traffic Law, every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle by a permissive driver. It is now a well-settled law that the Graves Amendment preempts New York's vicarious liability statute, Section 388 of the Vehicle and Traffic Law. See, *Graham v. Dunkley*, 50 A.D.3d 55 (2<sup>nd</sup> Dept. 2008).

Accordingly, to be entitled to the protection of the Graves Amendment and dismissal of the Complaint herein, FAIR TITLING TRUST must demonstrate that (1) it is an owner "engaged in the trade or business of renting or leasing motor vehicles"; and (2) plaintiff's alleged injuries were not caused by any negligence on the part of FAIR TITLING TRUST. Defendant has demonstrated both. FAIR TITLING TRUST is an Owner as Defined in the Graves Amendment and it is clear that FAIR TITLING TRUST is engaged in the business of renting vehicles to its members.

At the time of the accident, the subject vehicle was leased to Souffront who was responsible for the vehicle's maintenance. Accordingly, the evidence is clear that plaintiff's alleged injuries were not due to any negligence on the part of FAIR TITLING TRUST. It is evident that that plaintiff's alleged injuries were not caused by FAIR TITLING TRUST's failure to properly maintain the subject vehicle. The vehicle was no longer in the possession of FAIR TITLING TRUST pursuant to the terms of the lease, and therefore FAIR TITLING TRUST was not responsible for the vehicle's maintenance.

As is evidenced that plaintiff's alleged injuries were not caused by any negligence on the part of FAIR TITLING TRUST, plaintiff's cause of action must be dismissed by the Court. However, Defendant's request for sanctions is denied.

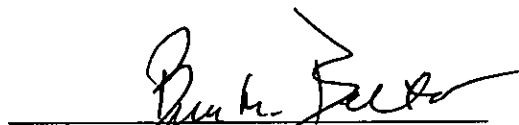
**CONCLUSION**

The Court finds that FAIR TITLING TRUST has submitted proof in admissible form that it is a company engaged in the business of renting automobiles, and as such, it would be entitled to the protection of the Graves Amendment (49 U.S.C. § 30106). The Graves Amendment has been found to be constitutional by the Appellate Division, Second Department and to preempt New York's vicarious liability statute (VTL § 388) as that law applies to companies engaged in the business of leasing and/or renting automobiles. As a vehicle owner that can only be vicariously liable for plaintiff's alleged injuries, it is apparent that FAIR TITLING TRUST is entitled to the protection afforded by the Graves Amendment.

Therefore, Defendant FAIR TITLING TRUST motion for an order: (1) Pursuant to CPLR §3211(a)(1) for a dismissal founded upon documentary evidence, as the policy of insurance and the Affirmation of Marc Bonnanni clearly set forth that CHRISTIAN RIVERA- SOUFFRONT entered into a lease agreement with FAIR TITLING TRUST, in which CHRISTIAN RIVERA-SOUFFRONT agreed to indemnify FAIR TITLING TRUST; and (2) Pursuant to CPLR § 3211(a)(7), dismissing with prejudice plaintiff's Summons and Complaint as against FAIR TITLING TRUST for failure to state a cause of action upon which relief may be granted on the grounds that 49 U.S. Code §30106 (commonly known as the "Graves Amendment") preempts and abolishes any cause of action that the plaintiff may have against the moving defendant is hereby GRANTED.

This constitutes the Decision and Order of this Court.

ENTER:

  
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BRUCE M. BALTER, J.S.C.  
**HON. BRUCE M. BALTER**  
**JUSTICE SUPREME COURT**

**FILED**  
**OCT 10 2019**  
COUNTY CLERK  
QUEENS COUNTY