

<b>Fetahu v New Jersey Tr. Corp.</b>
2020 NY Slip Op 31089(U)
April 27, 2020
Supreme Court, New York County
Docket Number: 158294/2013
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22
Justice

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VALBONA FETAHU,
Plaintiff,
- v -

INDEX NO. 158294/2013
MOTION DATE 11/26/2020
MOTION SEQ. NO. 005

NEW JERSEY TRANSIT CORPORATION
Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19 were read on this motion to/for DISMISS.

Before the Court is defendant’s Order to Show Cause to dismiss plaintiff’s claim on the grounds that it is barred by the doctrine of State Sovereign Immunity. This matter stems from an accident, which occurred on January 5, 2013, at 625 Eighth Avenue in the City, County and State of New York, when plaintiff Valbona Fetahu was injured while she was a passenger on board a bus operated by defendant New Jersey Transit Corporation (hereinafter “NJT”).

Defendant NJT argues that plaintiff’s claims are barred by the doctrine of State Sovereign Immunity. Defendant cites to Franchise Tax Bd. Of California v. Hyatt, 136 US 1277 [2016] in an attempt to argue NJT is exempt from suit in the State of New York. Defendant argues that pursuant to the Supreme Court of the United States’ (hereinafter “Supreme Court”) ruling in Franchise, NJT is considered an arm of the State of New Jersey as part of the executive branch and is thus exempt from suit in the state of New York (Mot, at 5 ¶21). Defendant’s argument is unavailing as the facts of this case are not analogous to that of Franchise. Even if this Court were to find that NJT is an arm of the State of New Jersey, defendant has failed to prove that New Jersey is exempt from suit by a private citizen in the State of New York.

Defendant argues that “[t]he Supreme Court held State immunity from private suit in another State’s courts is implicit in the Constitution” (Aff in Opp at 4, ¶14). However, this Court finds that the Supreme Court was clear in its ruling in *Franchise* that a State may permit a party to sue a foreign State. The Court found that a suit against a foreign state is permissible so long as it is consistent with the Full Faith and Credit Clause. “The Full Faith and Credit Clause applies in a straightforward fashion to state court judgments: ‘A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter’” (*Franchise* at 1285 citing *Nevada v. Hall*, 440 U.S. 1182 [1979]).

While it is true that the Full Faith and Credit Clause does not allow one State to apply another State’s law that violates its “own legitimate public policy“ it does not bar applying the law of another State (*Franchise* at 1282). Rather, when that law “exhibit[t][s] a ‘policy of hostility to the public Acts’ of a sister State, such suit should be banned. In *Franchise* the court did not allow Nevada to maintain jurisdiction over California because the facts of the Nevada decision “embodies a critical departure from its earlier approach. Nevada has not applied the principles of Nevada law ordinarily applicable to suits against Nevada’s own agencies. Rather it has applied a special rule of law applicable only in lawsuits against its sister States, such as California” (*Franchise* at 1281).

The United States Supreme Court found that allowing Nevada to award damages greater than \$50,000 was “opposed” to California law and “it is also inconsistent with the general principles of Nevada immunity law” (*id.* at 1278). The Court elaborated, “a State that disregards its own ordinary legal principles on this ground *is* hostile to another State” (*id.* at 1281). Here, in allowing suit against NJT, this Court does not depart from its own ordinary legal principles. The State of New York does not bar suit against the New York equivalent of the NJT, the

Metropolitan Transportation Authority (hereinafter “MTA”) and the New York City Transit Authority (hereinafter “NYCTA” for motor vehicle accidents. Thus, applying the same law to the NJT as the Court would to the MTA/NYCTA, the State does not disregard its own ordinary legal principles and is not hostile to the State of New Jersey.

Plaintiff’s opposition claims that the Supreme Court in *Franchise* “held that a State has a waivable privilege to assert immunity against suit by a private individual in another State. In other words, a State may consent to be sued in another State” (Aff in Opp at 3). Here, the Court notes that New Jersey permits victims of motor vehicle accidents to sue the State of New Jersey in New Jersey, and has not raised jurisdictional objections to suits against it in New York in the past (*Ceretta v New Jersey Transit Corp.*, 267 AD2d 128 [1st Dept 1999]). In *Franchise* the Supreme Court found that the Franchise Tax Board of California did not consent to the Nevada lawsuit as they fought jurisdiction in Nevada from the inception of the suit.

Here, in contrast to *Franchise*, the defendant has not objected to jurisdiction from the inception of this action. The present suit was commenced in 2013 and it has taken defendant nearly seven years to raise a jurisdictionally based objection. The Court finds that defendant NJT has waived its right to object to jurisdiction in New York. Defendant NJT avails itself of the roadways of the State of New York on a daily basis. To hold NJT immune from suit for negligence in motor vehicle accidents in New York would constitute a miscarriage of justice to the victims of accidents involving NJT vehicles, which operate in New York on a daily basis. Thus, for the reasons stated above, defendant NJT’s Order to Show Cause is denied.

Accordingly, it is

ORDERED that defendant’s Order to Show Cause to dismiss plaintiff’s claim on the grounds that it is barred by the doctrine of State Sovereign Immunity is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.

ADAM SILVERA, J.S.C.

4/27/20  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE