

Qaseem v Obaidi

2020 NY Slip Op 35614(U)

February 18, 2020

Supreme Court, Queens County

Docket Number: Index No. 716126/2019

Judge: Lourdes M. Ventura

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LOURDES M. VENTURA, J.S.C. IAS Part 37

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MOHAMMAD NASIR QASEEM, and
MOHAMMAD AKBRA QASEEM
Plaintiffs,

Index
Number: 716126/2019

-against-

Motion
Date: January 13, 2020

GHOTAI OBAIDI, TOYOTA LEASE TRUST,
SHAKELA RAHIMI and ZIA A. RAHIMI
Defendants.

Motion
Seq. No.: 1

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The following numbered papers read on this motion by Defendant Toyota Lease Trust's motion pursuant to CPLR 3211(a)(7), dismissing Plaintiffs' verified complaint and all counterclaims against Defendant Toyota Lease Trust, severing the dismissed action against Defendant Toyota Lease Trust from the remaining action and directing the Clerk of Court to enter Judgment in Defendant's favor, and granting Defendant Toyota Lease Trust's, such other and further relief as the Court may deem just and proper.

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Notice of Motion - Affirmation - Exhibits.....	1-3
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Upon the foregoing papers, it is ORDERED that the motion by Defendant Toyota Lease Trust's pursuant to CPLR 3211(a)(7), dismissing Plaintiffs' verified complaint and all counterclaims against Defendant Toyota Lease Trust, severing the dismissed action against Defendant Toyota Lease Trust from the remaining action and directing the Clerk of Court to enter Judgment in Defendant's favor is hereby granted to the following extent:

The instant action stems from a motor vehicle collision that occurred on or about December 14, 2018 on 150th Street at/or near the intersection of 76th Road in the County of Queens. Defendant Ghotai Obaidi (hereinafter "Defendant Obaidi") operated a 2017 Lexus NX 200T (hereinafter "subject vehicle") bearing a New York license plate NASIRQ. Defendant Obaidi leased the subject vehicle from Toyota Lease and Trust (hereinafter "Defendant TLT"). Plaintiffs Mohammad Nasir Qaseem and Mohammad Akbra Qaseem were passengers in the subject vehicle, which was operated by Defendant Obaidi at the time of the collision. It is alleged that Defendant Shakela Rahimi was operating vehicle bearing a New York License Plate CJS3207 when Defendant Obaidi proceeded through a stop sign and collided with Defendant Shakela Rahimi's vehicle.

Defendant TLT now moves to dismiss the complaint pursuant to CPLR 3211(a)(7) on the grounds that the claims are barred pursuant to 49 U.S.C.A. § 30106 (hereinafter "Graves Amendment"). Specifically, Defendant TLT contends that the Graves Amendment bars State vicarious liability actions against motor vehicles owners engaged in the trade, business, renting or leasing of motor vehicles. Defendant TLT submits the summons and verified complaint, certified police accident report, leasing agreement executed by Defendant Obaidi, certificate of title for the subject vehicle, Defendant TLT's verified answer to the complaint, Defendant Obaidi's verified answer to the complaint, Defendants Shakela and Zia Rahimi's verified answer to the complaint, notice to admit, and a notarized affidavit from Richard Torres in support of their motion to dismiss the instant case.

Plaintiff opposes Defendant's motion by affirmation and asserts that they conditionally consent to the discontinuance of this action against Defendant TLT on the condition that Defendant Obaidi who is the registered owner and driver of the subject vehicle waive any ability to assert in the future, an affirmative defense, as to mechanical defects of the subject vehicle at the time of the collision. However, Defendant Obaidi has not agreed to sign the stipulation waving said affirmative defense.

Defendant TLT seeks dismissal of the instant case pursuant to CPLR 3211(a)(7). The pertinent portions of CPLR 3211 reads as follows:

" (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:...

7. the pleading fails to state a cause of action; or..."

On a motion to dismiss pursuant to CPLR 3211, the factual allegations of the complaint must be deemed to be true and the non-moving parties must be afforded every favorable inference from the facts alleged. See *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 (2002). Dismissal is only warranted if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. See *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 (2002) quoting (*Leon*, 84 NY2d at 88; see generally Siegel, NY Prac. § 269, at 428 [3d ed]).

Defendant TLT further asserts that they are protected under the Graves Amendment and the pertinent portions of the Graves Amendment read as follows:

"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)."

Defendant TLT submits a copy of the executed lease agreement signed by Defendant Obaidi for the subject vehicle. Defendant TLT further submits a notarized affidavit from Richard Torres, the lease Collections Manager for Toyota Motor Credit Corporation (hereinafter "TMCC"). Mr. Torres affidavit alleges that he has personal knowledge of the facts alleged and reviewed Defendant TLT's records and files with respect to the facts of this case. Mr. Torres affidavit further alleges that TLT "at all relevant times have been, engaged in the business of leasing Lexus motor vehicles, including the leased vehicle herein", which establishes that Defendant TLT was the owner of the subject vehicle and that they engaged in the business of renting and leasing motor vehicles, including the subject vehicle (see 49 USC § 30106 [a] [1] *Antoine v. Kalandrishvili*, 150 A.D.3d 941(N.Y. App. Div. 2017)).

We now turn to Plaintiffs' contention that the case against Defendant TLT should not be dismissed because the remaining Defendants, specifically Defendant Obaidi, may raise an alternative theory of negligence on the ground of "mechanical defect". Mr. Torres affidavit alleges that "at all relevant times, including December 14, 2018, Ghotai Obaidi was not an agent, servant, or employee of TLT, and was not acting within the authority or scope of any duty or employment of TLT." Mr. Torres affidavit further alleges that "TLT does not engage in the repair, maintenance, delivery, service, operation... of the vehicles that are leased...". Mr. Torres affidavit further alleges that the "lessee is solely responsible for the repair and maintenance of the leased Vehicle during the term of the lease." In support of Mr. Torres allegations with respect to the maintenance of the subject vehicle, Defendant TLT submits the lease agreement executed by Defendant Obaidi. Upon a review of the executed lease agreement annexed to Defendant TLT's moving papers as Exhibit "C", page 2, paragraph 22 entitled " Vehicle Maintenance and Damages" states: "[y]ou are responsible for all maintenance, repair, service, and operating expenses of the vehicle" establishes that Defendant Obaidi was responsible for the maintenance, repair, and service of the subject vehicle and any "mechanical defects" alleged to have occurred at the time of the collision cannot be attributed to Defendant TLT. Notably, Plaintiffs do not submit any evidence to refute Mr. Torres allegations or the validity of the lease agreement attached to Defendant TLT's moving papers. Thus, Defendant TLT is afforded protection under the Graves Amendment and as such, Defendant TLT cannot be held vicariously liable in the instant case.

Based on the foregoing Defendant TLT motion is granted to the extent that the portions of the complaint that are alleged against Defendant TLT are dismissed and severed from the remaining allegations in the complaint, and any cross claims asserted against Defendant TLT are dismissed and severed from the remaining causes of actions in the complaint. Defendant TLT may enter Judgment dismissing the complaint and cross claims against it.

Date: February 18, 2020



LOURDES M. VENTURA, J.S.C.

FILED
FEB 25 2020
COUNTY CLERK
QUEENS COUNTY