

Cassas v Compass Holidays Inc.

2022 NY Slip Op 34384(U)

December 23, 2022

Supreme Court, New York County

Docket Number: Index No. 151514/2022

Judge: Lori S. Sattler

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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HUI FEN CASSAS,	INDEX NO.	<u>151514/2022</u>
Plaintiff,	MOTION DATE	<u>09/26/2022</u>
- v -	MOTION SEQ. NO.	<u>001</u>
COMPASS HOLIDAYS INC., TIAN BAO TRAVEL, TINMA TRAVEL & TOURS		
Defendant.	DECISION + ORDER ON MOTION	

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISSAL.

In this action alleging negligence, gross negligence, and deceptive business practices in violation of the General Business Law (“GBL”), Defendant Compass Holidays Inc. d/b/a Tiao Bao Travel (“Compass”) moves for an order pursuant to CPLR §§ 327, 3211(a), and 1001 dismissing the Verified Complaint against it and for attorneys’ fees and sanctions. Plaintiff Hui Fen Cassas (“Plaintiff”) opposes the motion.

The action arises out of Plaintiff’s alleged injuries resulting from a bus accident while on vacation in Cuba. As set forth in the Verified Complaint, on or about January 7, 2019, Plaintiff visited Defendant Tinma Travel & Tours (“Tinma”) where she read a brochure published by Compass advertising a ten-day tour in Cuba, which she then booked through Tinma. The tour began on February 13, 2019 and departed from Canada. The tour group convened at Toronto International Airport with the tour guide, an employee of Compass, and traveled as a group to Cuba. Once in Cuba, the tour was run by a non-party tour operator, OL Nine, a Canadian

company. Seven days into the tour, on February 20, 2019, the group's bus crashed. Plaintiff contends that she suffered severe injuries to her shoulder and was taken to the hospital. She then returned to New York on February 23 and sought further medical treatment. Plaintiff maintains that she understood that Compass arranged for all ground transportation during the trip, including bus travel.

Plaintiff commenced this action on February 18, 2022. With respect to her negligence causes of action, the Complaint alleges Defendants breached their duty to make safe travel arrangements by failing to adequately inspect the background and safety history of the bus operator (NYSCEF Doc. No. 1, Verified Complaint ¶ 36). As to her GBL cause of action, Plaintiff alleges Defendants engaged in deceptive business practices, specifically by misrepresenting the tour's travel arrangements, to obtain her reliance on those representations, and that this reliance caused her injuries. Compass now moves to dismiss on the grounds of *forum non conveniens*, nonjoinder of indispensable parties, and an alleged disclaimer of liability in its contract with Plaintiff. Compass further seeks sanctions, arguing the action is frivolous.

Compass first contends that New York is not the proper forum for this action. CPLR 327(a) permits the Court, upon the motion of any party, to dismiss an action where it finds that "in the interest of substantial justice the action should be heard in another forum." An action may be dismissed under *forum non conveniens* where there is no substantial nexus between New York and a plaintiff's cause of action (*see, e.g., Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 483 [1984]). Compass argues that the action must be dismissed on these grounds because the accident occurred in Cuba, the real parties of interest are Cuban and Canadian entities, and key liability witnesses and potential third-party defendants are not New York residents. Plaintiff

counters that she and all the Defendants are New York domiciliaries and that all transactions and occurrences giving rise to her causes of action occurred in New York.

The Court finds that there is a sufficient nexus between Plaintiff's causes of action and the State of New York. The Verified Complaint alleges that Compass breached its duty of care as a travel agent, in part by failing to warn Plaintiff of the dangers of the trip. Plaintiff booked the tour in New York from Tinma, a New York company, after reading a brochure published by Compass, another New York company. The Court therefore finds that New York is an appropriate forum to hear this action.

Compass next argues that the action should be dismissed because Plaintiff has failed to join indispensable parties by not including the bus company, driver, and the tour operator. CPLR 3211(a)(10) authorizes dismissal on the ground of nonjoinder of "a person who should be a party." According to CPLR 1001(a), joinder is mandatory for "[p]ersons who ought to be parties if complete relief is to be accorded between" the parties or for parties "who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants." It is well established that "joint tortfeasors are not necessary parties to an action" (*Hasenzahl v 44th St. Dev. LLC*, 203 AD3d 602, 603 [1st Dept 2022]; *Weinstein v W.W.W. Assoc., LLC*, 178 AD3d 486, 487 [1st Dept 2019]).

The Court finds that the bus company, driver, and tour operator are not necessary parties to this action based on the causes of action articulated in the Verified Complaint. These parties' purported acts or omissions are not pertinent to Plaintiff's allegation that Compass breached its duty of care as a travel agent by failing to adequately warn her about possible dangers of the tour, that it failed to exercise care when planning the tour, or that it violated the GBL. Even if Plaintiff's theory of liability could be construed as encompassing any acts or omissions by non-

parties, those parties would merely be joint tortfeasors therefore would not be indispensable parties to this action (*see Hasenzahl*, 203 AD3d at 603).

Finally, Compass argues it is entitled to dismissal because it has disclaimed liability with respect to Plaintiff’s asserted injuries pursuant to the Compass User Agreement (NYSCEF Doc. No. 18, “User Agreement”). This branch of the motion is denied. The User Agreement disclaims liability for negligent acts or omissions by companies not under Compass’s control (User Agreement, at 6), but Plaintiff alleges that Compass was negligent in their duty to “select a safe excursion tour bus for their clients” (Verified Complaint ¶ 36), therefore the waiver does not apply to her negligence cause of action. It is likewise unenforceable as to her gross negligence and reckless disregard claims as a matter of public policy (*see, e.g., Abacus Fed. Sav. Bank v ADT Sec. Servs., Inc.*, 18 NY3d 675, 682 [2012]; *Southern Wine & Spirits of Am., Inc. v Impact Envtl. Eng’g, PLLC*, 104 AD3d 613, 614 [1st Dept 2013]). Additionally, there is no language in the User Agreement absolving Compass of liability under the GBL.

In light of the foregoing, Compass’s motion for attorney’s fees and sanctions is denied.

Accordingly, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED that counsel are directed to appear for a Preliminary Conference on February 8, 2023 at 12:00 pm via Teams.



LORI S. SATTLER, J.S.C.

<u>12/23/2022</u>				
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT