

Simpson v Power Auth. of the State of N.Y.

2022 NY Slip Op 34910(U)

March 24, 2022

Supreme Court, Westchester County

Docket Number: Index No. 61684/2020

Judge: Janet C. Malone

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This opinion is uncorrected and not selected for official publication.

To commence the statutory period for appeals as of right under CPLR § 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PATRICIA SIMPSON, Temporary Administrator
Ad Prosequendum of the ESTATE OF ROBERT T.
HOBAN, JR., Deceased,

Index No. 61684/2020

DECISION AND ORDER

Plaintiff,

Motion Sequence #3

-against-

POWER AUTHORITY OF THE STATE OF NEW YORK
a/k/a NEW YORK POWER AUTHORITY, NORTHLINE
UTILITIES, LLC and NORTHLINE VENTURES, INC.,

Defendants.

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MALONE, J.

Defendants Power Authority of the State of New York a/k/a New York Power Authority (“Power Authority”) and Defendants Northline Utilities, LLC and Northline Ventures, Inc. (together, “Northline”) (collectively, “Defendants”) move pursuant to CPLR § 3211(a)(7) for an Order dismissing the Complaint of plaintiff Patricia Simpson (“plaintiff”) as Temporary Administrator *Ad Prosequendum* of the Estate of Robert T. Hoban, Jr., Deceased (the “decedent”) on the ground that the two causes of action in plaintiff’s Complaint are preempted by federal law. Plaintiff opposes the motion.

This action was commenced on October 5, 2020, by plaintiff’s filing of a Summons and Complaint. The lawsuit arises from a fatal helicopter accident that occurred on October 30, 2018,

in Beekmantown, New York, during which the decedent was operating a helicopter when it tragically collided with power lines, and from which multiple fatalities resulted. The Complaint asserts a first cause of action alleging violations of New York Labor Law Sections 200, 240, and 241(6); and a second cause of action alleging negligence, gross negligence and recklessness.¹ On January 13, 2021, Defendants respectively furnished Answers in which they, *inter alia*, denied the material allegations of the Complaint and set forth various affirmative defenses.

CPLR § 3211 Standard

“On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading must be afforded a liberal construction and the court must 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.” *Klostermeier v. City of Port Jervis*, 160 N.Y.S.3d 291, 293 (2d Dep’t 2021), citing *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994); accord *Palmieri v. Perry, Van Etten, Rozanski & Primavera, LLP*, 160 N.Y.S.3d 67, 70² (2d Dep’t 2021). “However, factual allegations that do not state a viable cause of action, [or] that consist of bare legal conclusions are not entitled to such consideration.” *Doe v. Bloomberg, L.P.*, 109 N.Y.S.3d 254, 257 (1st Dep’t 2019); see *Dubon v. Drexel*, 151 N.Y.S.3d 126, 129 (2d Dep’t 2021).

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¹ The Complaint erroneously refers to the causes of actions as “counts,” which is federal parlance.

Federal Preemption Doctrine

As the Court of Appeals of New York explained in *Lee v. Astoria Generating Co., L.P.*, 13 N.Y.3d 382, 391-392 (2009):

“It is well recognized that the Supremacy Clause (US Const, art VI, cl 2) may entail pre-emption of state law either by express provision, by implication, or by a conflict between federal and state law” *Balbuena v. IDR Realty LLC*, 6 N.Y.3d 338, 356 [2006], quoting *New York State Conference of Blue Cross & Blue Shield Plans v Travelers Ins. Co.*, 514 U.S. 645, 654 [1995]). Congress’ intent to preempt “may be explicitly stated in the statute’s language or implicitly contained in its structure and purpose. In the absence of an express congressional command, state law is pre-empted if that law actually conflicts with federal law” (*Cipollone v Liggett Group, Inc.*, 505 US 504, 516 [1992]). State law will not “be superseded by a Federal Act unless that was the clear and manifest purpose of Congress” (*New York State Conference of Blue Cross & Blue Shield Plans*, 514 U.S. at 655).

Furthermore, it is well settled that “[p]reemption of state law may occur by express statutory provision or through implication, the latter of which may be accomplished through either federal preemption of the field of a particular subject matter or the existence of an irreconcilable conflict between federal and state law.” *Sutton 58 Assoc. LLC v. Pilevsky*, 36 N.Y.3d 297, 305 (2020), citing *Doomes v. Best Tr. Corp.*, 17 N.Y.3d 594, 601 (2011). As such, “state law is pre-empted to the extent that it actually conflicts with federal law.” *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990). Thus, the United States Supreme Court “has found pre-emption where it is impossible for a private party to comply with both state and federal requirements . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *English*, 496 U.S. at 79, citing *Florida Lime & Avocado Growers, Inc.*

v. Paul, 373 U.S. 132, 142-143 (1963) and *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (emphasis added).

Federal Aviation Regulations

The Federal Aviation Act of 1958 (“FAACT”) is among the chief federal aviation regulations (“FARs”) that have been enacted by Congress. *See* 49 USC § 40101 *et seq.* The statute was enacted primarily because “Congress intended to have a single, uniform system for regulating aviation safety,” and “the FAA[CT] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules.” *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir. 2007). In fact, the FAACT “was passed by Congress for the purpose of centralizing in a single authority -- indeed, in one administrator -- the power to frame rules for the safe and efficient use of the nation’s airspace.” *Air Transp. Ass’n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224 (2d Cir. 2008). “Pursuant to general statutory authority, the Administrator of the FAA[CT] has issued extensive rules, regulations and minimum standards designed to enhance the safety of civil aeronautics.” *Federal Aviation Admin. v. Landy*, 705 F.2d 624, 628 (2d Cir. 1983), citing 14 C.F.R. Parts 1-199. “These regulations go to such varied matters as qualifications and training of maintenance and flight personnel, equipment required in the aircraft and on the ground, and preparation of detailed manuals governing inspection, maintenance and operation of the aircraft.” *Federal Aviation Admin. v. Landy*, 705 F.2d at 629. “Other regulations cover areas such as ‘recent experience’ (14 CFR 121.439), ‘line checks’ (14 CFR 121.440) and ‘proficiency checks’ (14 CFR 121.441).” *Matter of Air Crash Near Clarence Ctr., N.Y. on Feb. 12, 2009*, 38 Misc. 3d

308, 313 (Sup Ct., Erie Cty. 2012). “Training is extensively covered in subpart N, part 121 of title 14 . . . Qualifications of check airmen and flight instructors are similarly exhaustive.” *Matter of Air Crash Near Clarence Ctr., N.Y.*, 38 Misc. 3d at 313, citing 14 CFR 121.411-121.414.

Plaintiff’s Claims are Preempted by FAACT and the FARs

As set forth below, the Court credits defendants’ primary argument that plaintiff’s causes of action are preempted by federal law, i.e., the FAACT and the FARs. As an initial matter, a plain reading of the Complaint makes clear that the helicopter accident that is central to this lawsuit falls under the control of the Federal Aviation Administration (“FAA”). *See Faucher Aff., Ex. A.* The Complaint alleges - and there is no dispute - that the decedent was piloting the helicopter at the time of the October 30, 2018 accident. *Id.* The Complaint affirmatively pleads that the work being conducted was being performed under the FARs, as it states: “Catalyst obtained the requisite Operating Certificate from the FAA authorizing it to perform Rotorcraft External-Load Operations in accordance with 14 CFR Part 133, said Certificate identifying Decedent as Catalyst’s Chief Pilot and Director of Operations and Catalyst’s Aerospatiale AS355F2 helicopter as the aircraft.” *See Faucher Aff., Ex. A* at ¶ 15. Furthermore, the co-pilot of the helicopter, Scott Fabia (“Fabia”) testified at his deposition that the FAA’s rules and regulations govern the operation and flight of the helicopter that was flown at the time of the October 30, 2018, accident, and Fabia’s testimony reflects that the means of his work was regulated by the FAA. *See Faucher Aff., Ex. D; Faucher Aff., Ex. A* at ¶ 18. As such, the Court finds that the fatal helicopter accident at issue in this lawsuit falls under the control of the FAA and is subject to the FAACT and FARs.

Turning first to plaintiff's second cause of action for negligence, "[t]he New York state standard of care for negligence impinges on the federal standard of care set out in FAR 91.13, in that New York state has a 'reasonable person' standard, and the FARs set the standard as carelessness or recklessness." *Crout v. Haverfield Int'l, Inc.*, 269 F. Supp. 3d 90, 97 (W.D.N.Y. 2017), citing *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206- (2d Cir. 2011). "This presents a conflict between the federal and state standards. As such, the federal standard of care preempts the application of the New York state standard." *Crout*, 269 F. Supp. 3d at 97, citing *In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009*, 798 F. Supp. 2d 481, 486 (W.D.N.Y. 2011) (stating that the FAA "and its accompanying federal regulations preempt state regulation of the air safety field, including state standards of care" and noting that "[a]pplying state law standards of care would interfere with these regulations and potentially subject airlines and related entities to 50 different standards.") *See also Aldana v. Air E. Airways, Inc.*, 477 F. Supp. 2d 489, 493 (D. Conn. 2007) (applying the federal standard of care to state negligence claims arising out of an airplane crash); *Shupert v Cont'l Airlines, Inc.*, 2004 U.S. Dist. LEXIS 6214, *6 (S.D.N.Y. Apr. 12, 2004) (applying the federal standard of care to state law claims involving air safety). Accordingly, because the standard of care for the second cause of action for negligence is in direct conflict with the FARs, such cause of action is preempted by federal law. *See Crout*, 269 F. Supp. 3d at 97; *In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009*, 798 F. Supp. 2d at 486.

Next, regarding the first cause of action alleging violations of New York Labor Law Sections 200, 240, and 241(6), the Court similarly credits defendants' contention that such statutes

are inconsistent with, and therefore preempted by, the FAACT and the FARs. It is undisputed that Labor Law § 200 is a codification of the common law duty imposed upon an owner or general contractor to provide construction site workers with a safe work environment.² As such, liability under both Labor Law §§ 200 and 240(1)³ require that the party charged with this responsibility has the authority to control the activity bringing about the injury. *See, e.g., Jock v. Fien*, 80 N.Y.2d 965, 967 (1992) (noting that Labor Law § 200 requires the “reasonable and adequate protection to the lives, health and safety of employees”); *see also Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 N.Y.3d 280, 286 (2003) (stating regarding Labor Law § 240 that “[t]he Legislature looked to employers (and later, contractors and owners) as the entities best able to control the workplace and provide for its safety”). Critically, however, the FARs unambiguously provide that “[t]he pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.” *See* 14 CFR § 91.3(a). As such, the Court credits the defendants’ argument that, unlike a situation contemplated by the Labor Law in which a contractor or owner is controlling the workplace and providing for its safety, no one has authority over the pilot during flight operations.

² Labor Law § 200 regarding the “General duty to protect health and safety of employees” provides in relevant part that “[a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons.”

³ Labor Law § 240(1) states: “All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.”

Also notably, Defendants are correct in submitting that Labor Law § 200 imposes a negligence/reasonable person standard of care, whereas 14 CFR § 91.13(a) requires proof of “careless” or “reckless” conduct as a liability threshold. Accordingly, the Labor Law § 200 claim incorporated into the first cause of action is in direct conflict with the FARs and is thus preempted by federal law. *See Matter of Air Crash Near Clarence Ctr., N.Y. on Feb. 12, 2009*, 38 Misc. 3d at 313-314 (holding in a lawsuit involving a fatal airplane crash that the “pervasiveness and completeness of the federal regulatory scheme leaves no room for state standards of care” and that defendants have established that plaintiffs’ claims are preempted by federal law).

The plaintiff’s Labor Law § 240(1) is similarly in direct conflict with the FARs. Regarding Labor Law §§ 240 and 241, the Appellate Division in *Perchinsky v. State*, 232 A.D.2d 34, 37-38 (3d Dep’t 1997) held in no uncertain terms: “[b]ecause these statutes impose absolute liability without regard to a worker’s culpability, their language should not be strained to encompass accidents which the Legislature did not intend to include.” As suggested by the Court in *Perchinsky*, a plain reading of Labor Law § 240(1) makes clear that it is a strict liability statute that imposes liability without fault if certain enumerated safety devices are not provided, or if such safety devices fail. This is directly in conflict with the higher standard of care set forth in 14 CFR § 91.13(a), which states that “[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” (emphasis added).

Moreover, and similarly, the portion of the plaintiff’s first cause of action that is premised upon alleged violations of Labor Law § 241(6) is also preempted by federal law.⁴ This statute

⁴ Labor Law § 241(6) states in relevant part that “[a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.”

allows for liability without fault, and any liability under Labor Law § 241(6) is premised upon an underlying breach of New York State industrial regulations. Therefore, liability under Labor Law § 241(6) is directly in conflict with 14 C.F.R. § 91.13(a)'s higher burden of proving that the defendants' actions were careless or reckless as a threshold for liability, and such direct conflict renders a claim under Labor Law § 241(6) preempted by the FARs. See *Sutton 58 Assoc. LLC*, 36 NY3d at 305 (noting that preemption is proper where there is "the existence of an irreconcilable conflict between federal and state law."); see also *Doomes*, 17 N.Y.3d at 601.

Although it is not controlling upon this Court, a recent decision from the United States District Court for the Northern District of New York is consistent with the Court's disposition herein. In the two consolidated lawsuits captioned *McAllister et al. v. Catalyst Aviation, LLC* (8:19-CV-642 and 8:19-CV-647) (the "Federal Action"), two construction workers who were Northline employees and were passengers in the helicopter operated by the decedent at the time of the October 30, 2018 accident sought to amend their pleadings to assert causes of action that are substantially similar to those asserted herein. See *Faucher Aff., Ex. E*. Indeed, the plaintiffs in the Federal Action sought to include proposed causes of action for, *inter alia*, negligence and violations of Labor Law §§ 200, 240, and 241(6). *Id.* In denying the plaintiffs' motion for leave to amend, Magistrate Judge Daniel J. Stewart issued a Memorandum-Decision and Order dated December 22, 2020, which held that because the Labor Law claims were based upon aviation safety related to the regulation and operation of a helicopter, as opposed to involving construction safety, the claims fell within the field of aviation safety and were therefore preempted by federal law. See *Faucher Aff., Ex. E* at pp. 10-12. In relevant part, Judge Stewart stated as follows:

The state Labor Law provisions at issue here are generally applicable workplace safety statutes that do not specifically reference air safety. While Plaintiffs seek to frame the events underlying these cases as workplace accidents, which could form a basis for Labor Law claims, the facts and the proposed pleadings themselves highlight the inescapable connection to air safety. The workplace at issue here was a helicopter in flight . . . The gravamen of the proposed Labor Law causes of action is that defendant failed to provide proper safety equipment to Plaintiffs while they were passengers in and working from the helicopter . . . Here, there can equally be little doubt that the alleged failure of an aviation company to provide appropriate safety restraints or similar safety equipment to those in flight similarly implicates air safety . . . The facts of this case as pled center around air safety. As a result, preemption clearly applies. (Faucher Aff., Ex. E at pp. 10-12 [emphases added and internal citations omitted]).

Accordingly, as in the Federal Action, where, as here, the plaintiff's causes of action "center around" and have an "inescapable connection" to air safety, such causes of action are preempted by federal law. *See* Faucher Aff., Ex. E at pp. 10-12.

Several of the arguments and authorities set forth in opposition by plaintiff are readily distinguishable. For example, plaintiff cites to *Sakellardis v. Polar Air Cargo, Inc.*, 104 F. Supp. 2d 160, 161 (E.D.N.Y. 2000) for the notion that "the contention that federal law preempts New York statutes protecting workers against falls from scaffolds is rejected." *See* Schoenhaus Aff. at ¶ 5. But *Sakellardis* is factually inapposite, as it did not involve an aviation accident. Rather, it concerned a mechanic who fell from scaffolding while working on a parked aircraft at an airport. As such, it surely did not "center around" nor have an "inescapable connection" to air safety but was a run-of-the-mill scaffolding accident that happened to involve work on a stationary aircraft. *See* Faucher Aff., Ex. E at pp. 10-12. Similarly distinguishable is *Pastorino v. City of New York*, 191 A.D.3d 440, 441 (1st Dep't 2021), which case had no connection whatsoever to aviation safety

nor to the FAACT or FARs, and instead involved a construction foreman who was injured while attempting to step onto a barge in connection with construction on the Broadway Bridge over the Harlem River. *See* 191 A.D.3d at 441; *see also* Schoenhaus Aff. at ¶ 11.

Furthermore, the Court does not credit Plaintiff's contention that an analysis of maritime law - which has no bearing upon aviation law - requires that defendants' motion be denied. *See* Schoenhaus Aff. at ¶¶ 20-30. As addressed generally above, federal regulation of aviation law is "extensive and exclusive" (*In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009*, 798 F. Supp. 2d at 484); and "[t]he United States Government has exclusive sovereignty of airspace of the United States" (*see* 49 U.S.C. § 40103[a](1)). Indeed, the "FAA was passed by Congress for the purpose of centralizing in a single authority -- indeed, in one administrator -- the power to frame rules for the safe and efficient use of the nation's airspace." *Air Transp. Ass'n of Am.*, 520 F. 3d at 224.

In stark contrast, the exercise of admiralty jurisdiction "does not result in automatic displacement of state law" (*Yamaha Motor Corp. U.S.A. v. Calhoun*, 516 U.S. 199, 206 [1996]); and "extensive regulatory authority is left to the States" with respect to maritime torts (*see, e.g., In re Air Crash at Belle Harbor*, 2006 U.S. Dist. LEXIS 27387, **39-40 [S.D.N.Y. May 9, 2006]). Given that maritime law often even encompasses state law, there is simply no valid basis for analogizing maritime law and aviation law in the context of federal preemption as related to this lawsuit. *See Grant Smith-Porter Ship Co. v Rohde*, 257 U.S. 469, 477 (1922) (stating that "as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented by state statutes"); *Cammon v. City*

of N.Y., 95 N.Y.2d 583, 588 (2000) (citing the “maritime but local rule” as an instance of the overlap between maritime and state law).

In conclusion, the tragic helicopter accident from which this action arises indisputably falls within the scope of the FAA and the FARs, which preempt those New York laws in conflict therewith. As plaintiff’s first cause of action and the branch of her second cause of action concerning Labor Law § 200 involve the standard of care of reasonableness, and as the portions of the second cause of action arising from Labor Law §§ 240 and 241 impose strict liability, each of the plaintiff’s claims are directly in conflict with the carelessness and recklessness standards set forth by the FARs. *See* 14 CFR § 91.13(a). Accordingly, based upon the foregoing, both of plaintiffs’ causes of action are preempted by federal law. As such, defendants’ motion to dismiss the Complaint pursuant to CPLR 3211(a)(7) is granted in its entirety, without costs or disbursements.⁵

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⁵ All other arguments raised on this motion and evidence submitted by the parties in connection therewith have been considered by this Court, notwithstanding the specific absence of reference thereto.

ORDERED, that the motion by Defendants Power Authority of the State of New York a/k/a New York Power Authority, Northline Utilities, LLC and Northline Ventures, Inc. to dismiss the Complaint for failure to state a cause of action is GRANTED; the Complaint is dismissed.

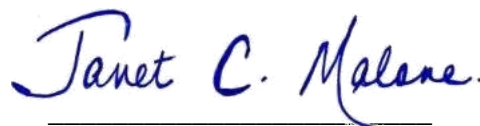
In deciding this motion, the Court considered papers filed with New York State Courts Electronic Filing Document Numbers 17, 19-26, 35-42, and 45.

To the extent relief requested is not addressed herein, the relief is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
March 24, 2022

ENTER:



HON. JANET C. MALONE
Justice of the Supreme Court

To: *Counsel of Record via NYSCEF*