

Sherpa v VW Credit Leasing Ltd.

2024 NY Slip Op 33542(U)

October 7, 2024

Supreme Court, New York County

Docket Number: Index No. 153194/2022

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X

LHAKPA SHERPA,

Plaintiff,

- v -

VW CREDIT LEASING LTD., RICHARD APPLETON DOW,
JANE DOE

Defendants.

-----X

INDEX NO. 153194/2022

MOTION DATE 05/13/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents and following oral argument, it is ordered that Defendants' motion for an Order pursuant to CPLR 321 (a) (7) and 49 USC 30106 (c) (the Graves Amendment) dismissing the Complaint against Defendant VW Credit Leasing Ltd is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a May 16, 2019 motor vehicle accident between a vehicle owned and operated by Plaintiff and a vehicle owned by Defendant VW, operated by Defendant Richard Appleton Dow, and leased by Defendant Jane Doe.

Defendant VW Credit Leasing Ltd moves to dismiss Plaintiff's Complaint on the grounds that the Graves Amendment precludes liability against the leasing company in a motor vehicle accident. Defendant VW Credit Leasing Ltd contends that Plaintiff's action against it is based solely on the theory that it is vicariously liable to plaintiff for damages caused by the operator of its leased vehicle, Defendant Richard Appleton Dow. Defendants contend that the submissions of the rental/lease agreement between Defendant and its lessee and the affidavit of Mr. Richard

Vassar establish Defendant VW Credit Leasing Ltd is in the business of leasing motor vehicles. Defendants further contend that Defendant Richard Appleton Dow was not an agent or an employee of VW Credit Leasing Ltd and therefore Plaintiff cannot maintain its action of vicarious liability against Defendant VW Credit Leasing Ltd. As such, Defendants contend that Defendant VW Credit Leasing Ltd cannot be held vicariously liable for the negligent acts of its renter, lessee, permissive driver and operator.

On a motion to dismiss brought under CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83 [1994]). Ambiguous allegations must be resolved in the plaintiff’s favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759 [2015]). “The motion must be denied if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]). However, when evidence is submitted on a motion to dismiss, the Court must look to whether the plaintiff has a cause of action, rather than whether it is pleaded (*Braun v Lewis*, 99 AD3d 574, 575 [1st Dept 2012]).

Under the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable 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) (*Steigelman v Transervice Lease Corp.*, 210 AD3d 515 [1st Dept 2022]). A party seeking dismissal based on the Graves Amendment has the burden of establishing prima facie that

they are engaged in the business of renting or leasing motor vehicles, that they leased the vehicle involved in the subject accident, and that said accident occurred during the period of the lease (*Muslar v Hall*, 214 AD3d 77, 81 [1st Dept 2023]). If the plaintiff has alleged negligent maintenance, the movant must also establish there was no negligence on their part, as a direct negligence claim is not barred by the Graves Amendment (*Collazo v MTA-New York City Tr.*, 74 AD3d 642 [1st Dept 2010]).

In support of their motion, Defendants submit a copy of the title and registration with the primary owner listed as Defendant VW Credit Leasing Ltd, an affidavit of Richard Vassar, the General Risk Manager for VW Credit Leasing Ltd and a copy of the lease. In his affidavit, Vassar avers that VW Credit Leasing Ltd is in the business of leasing motor vehicles pursuant to long term written leases. He attaches a lease agreement to his affidavit and avers that the lease agreement is dated January 24, 2019, is for a term of 39 months, and is kept in the ordinary course of business by VW Credit Leasing Ltd. He further avers that Harriet B. Flanigan entered into a lease agreement with Jack Daniels Audi Warwick which was simultaneously assigned by Audi Warwick to VW Credit Leasing Ltd. with all rights, title, and interest for and to the vehicle and the lease. Vassar avers that on the date of the accident alleged in this action, May 16, 2019, Harriet B. Flanigan was not the employee, servant, or agent of VW Credit Leasing Ltd and that Harriet B. Flanigan was not acting on the instruction, either expressed or implied of VW Credit Leasing Ltd. on the alleged date of loss.

The Court notes that the purported lease attached to Defendants' motion papers is illegible (*see Tello v Upadhyaya*, 215 AD3d 778 [2d Dept 2023] where the court found that Defendant's evidentiary submissions, namely an illegible lease and no assignment documentation, was insufficient to establish Graves Amendment protections). The purported assignment of the lease

to Defendant VW Credit Leasing, Ltd was not submitted. Vassar gave no details concerning the purported assignment and did not state that he had personal knowledge of the transactions at issue. Thus, Defendants failed to establish that Defendant VW Credit Leasing Ltd is shielded by the Graves Amendment. Because movant Defendants have failed to make the required showing, the motion is denied and the Court need not consider the opposing papers (*see Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Accordingly, it is

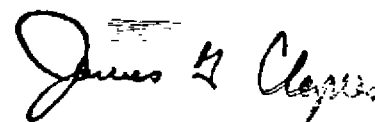
ORDERED that the motion by Defendants pursuant to CPLR 3211 (a) (7) to dismiss the Complaint against Defendant VW Credit Leasing Ltd pursuant to the Graves Amendment (49 USC 30106) is denied; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendants with Notice of Entry.

This constitutes the Decision and Order of the Court.

10/7/2024

DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: