

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
GEORGE J. SILVER

J.S.C.

PRESENT: _____

PART 22

Index Number : 114753/2008

GOMEZ, RAMON

INDEX NO. _____

vs

NISSAN INFINITY

MOTION DATE 2/3/10

Sequence Number : 002

MOTION SEQ. NO. _____

DISMISS

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were filed in this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ^{AND MEMO OF LAW} _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

In this action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident defendant Nilt, Inc. s/i/h/a Nissan Infinity LT. (hereinafter Nilt) moves pursuant to CPLR 3211 (a) (7) to dismiss the complaint of plaintiffs Ramon Gomez and Maria Gomez (hereinafter plaintiffs) on the ground that, pursuant to 49 USC § 30106 (hereinafter the Graves Amendment), the complaint fails to state a cause of action. Plaintiffs Verified Complaint alleges that plaintiff Ramon Gomez was injured when his vehicle and a vehicle operated by defendant Lisa M. Pitingolo and owned by Nilt came into contact. Plaintiffs commenced the instant action on November 23, 2008.

The Graves Amendment prohibits the imposition of vicarious liability on vehicle lessors for injuries resulting from the negligent use or operation of the leased vehicle (*Tirado v. Elrac Inc.*, 2008 NY Slip Op 6506 [1st Dept]), applies to all actions commenced on or after August 10, 2005 (*see* 49 USC § 30106[c]), and has been enforced as preempting the vicarious liability imposed on commercial lessors by Vehicle and Traffic Law § 388 (*Graham v Dunkley*, 2008 NY Slip Op 958 [2d Dept]). The statute provides “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).

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
PAPERS NUMBERED
MAR 2 2010
NEW YORK COUNTY CLERK'S OFFICE

In support of its motion Nilt submits a copy of the rental agreement between co-defendant Pitingolo and Douglas Infiniti, dated June 21, 2007 and the affidavit of John Brinegar, Supervisor for Regional Collections Department for Nissan Motor Acceptance Corporation, a servicer for Nilt. This affidavit establishes that Nilt is the managing trustee for Nissan-Infiniti LT and the title owner of the vehicle motor vehicle in question. The affidavit further establishes that at all relevant times Nilt was engaged as trustee for Nissan-Infiniti LT in the business of leasing vehicles and that the lease agreement between defendant Pitingolo and Douglas Infiniti was subsequently assigned from the dealership to Nissan-Infiniti LT. Moreover, Brinegar avers that Nilt does not engage in the repair, maintenance, delivery, service, operation possession, management, supervision or control and/or inspection of the vehicles leased through authorized Nissan dealerships. Finally, the affidavit establishes that the only relationship between Nilt and co-defendant Pitingolo was that of lessor/lessee.

In opposition plaintiffs' counsel argues that there has been discovery in this action and therefore it is unknown if co-defendant Pitingolo will claim any type of mechanical malfunction of the vehicle. Plaintiffs also contend that discovery may reveal that co-defendant Pitingolo was somehow unqualified to be operating the leased vehicle and should not have been leased the vehicle.

As the Brinegar affidavit sufficiently establishes that Nilt does not maintain the vehicles leased through authorized Nissan dealerships but is simply the title owner for all Nissan- leased vehicles in New York State, and that the only a lessor/lessee relationship existed between co-defendants, plaintiffs' speculation is insufficient to warrant denial of the motion.

Accordingly, it is hereby

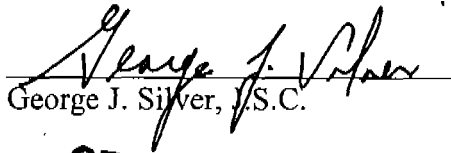
ORDERED that defendant Nilt, Inc. s/i/h/a Nissan Infinity LT.'s motion to dismiss is granted and the complaint is dismissed as to defendant Nilt, Inc. s/i/h/a Nissan Infinity LT. with costs and disbursements to defendant Nilt, Inc. s/i/h/a Nissan Infinity LT. as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for Nilt, Inc. s/i/h/a Nissan Infinity LT. is to serve a copy of this order, with Notice of Entry, upon counsel for all parties within 30 days.

This constitutes the decision and order of the court.

FILED


George J. Silver, J.S.C.

Dated: March 10, 2010
New York County

MAR 12 2010

GEORGE J. SILVER
J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE