

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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RAFAEL ORLANDO INFANTE,

Index No.: 18167/05

Plaintiff,

Motion Dated:
December 13, 2005

-against-

Cal. No.: 7

U-HAUL CO. OF FLORIDA, CARMINE
CALDERARO and EDUARDO CITRON,

Defendants.

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The following papers numbered 1 to 9 read on this motion by defendant U-HAUL CO. OF FLORIDA to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(1),(7) & (8).

Papers
Numbered

Notice of Motion, Affirmation, Exhibits....1-4
Affirmation in Opposition, Exhibits.....5-7
Reply Affirmation.....8-9

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendant U-Haul of Florida's motion to dismiss pursuant to CPLR § 3211 is granted. Defendant has presented sufficient evidence that it did not own the vehicle involved in plaintiff's accident. Rather, defendant presented the certificate of title demonstrating that U-Haul of Arizona was the owner of the vehicle in question. Plaintiff's opposition seeking further discovery before the court decides this motion is without merit, as he

presented no evidence to support a theory of ownership against U-Haul of Florida that would justify prolonging this matter. (See *Wyllie v. District Atty. of County of Kings*, 2 AD3d 714 [2nd Dept. 2003].) Regardless, it is clear that plaintiff's claim against either U-Haul of Florida or U-Haul of Arizona is invalid based upon Congress' recent enactment of the Safe, Accountable, Flexible Efficient Transportation Equity Act- A Legacy for Users." (See 49 USC 30106 [8/10/2005].) This law, and specifically the "Graves Amendment", resolved a long-standing debate as to the propriety of imposing vicarious liability on car owners who rent or lease their vehicles which subsequently are involved in motor vehicle accidents. By enacting the Graves Amendment, Congress has prohibited vicarious liability against these owners and preempted the laws in states, such as New York, that previously permitted it.

As plaintiff's claim against either U-Haul entity is under the theory of vicarious liability, his claim cannot stand. (See generally *Piche v. Nugent*, 2005 WL 2428156 [U.S.D.C. Maine 9/30/2005].)

Accordingly, defendant's motion to dismiss is granted and plaintiff's Complaint is dismissed solely as to defendant U-Haul of Florida.

Dated: January 18, 2006

Augustus C. Agate, J.S.C.