

5404. 0092 JK

OCT 25 2007

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA
Justice

X PART 13

MONA TRAITOUROS and CHRIS
TRAITOUROS,

INDEX NO. 5865/07

Plaintiffs,

-against-

MOTION DATE: 9/11/07
SEQUENCE NO. 001, 002

JEFFREY GOLDSTEIN, WHEELS, INC.,
HOFFMAN, LA ROCHE, INC. and THE
ROCHE GROUP, LLC,

Defendants.

X

Notice of Motion, Affs. & Exs.....	1
Affirmation In Opposition & Exs.....	2
Reply Affirmation & Exs.....	3
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Upon the foregoing papers, it is ordered that the motion by defendants for an order dismissing the action pursuant to CPLR 3211(a)(7) is denied as to defendants Hoffman, LaRoche and The Roche Group. The motion is granted as to defendant Wheels, Inc..

The branch of defendants' motion contesting service and personal jurisdiction pursuant to CPLR 3211(a)(8) has been withdrawn.

In this action plaintiff seek to recover damages for personal injuries as defendants by Insurance Law §5102 as a result of a car accident which occurred on February 2, 2007 in Plainview, N.Y.

Plaintiff, Mona Traitouros, a pedestrian, was allegedly hit by a car owned and operated by defendant Jeffrey Goldstein, leased by defendant Hoffman, LaRoche and The Roche Group from Wheels, Inc. Plaintiff Chris Traitouros has a derivative cause of action.

Defendant Wheels contends that the vicarious liability of vehicle lessors is not a viable cause of action pursuant to 49 USC 30106(a) effective August 10, 2005 ("Graves Amendment"). This act preempts VTL §388 which holds an owner of a leased vehicle liable for the negligence of the vehicle operator. It is uncontroverted that this action was commenced on April 30, 2007.

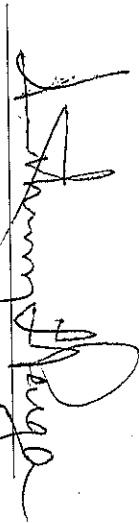
Plaintiffs argue that New York Courts "have not had one view on this issue" (citing *Graham v. Dunkley*, 13 Misc3rd 790 (Queens Co. Sup. Ct. 2006). The *Graham* Court held that the "Graves" amendment exceeded Congress' commerce clause powers. However, this Court does not share the view held only by the *Graham v. Dunkley* Court. Rather, for the purposes of deciding this motion the Federal statute is constitutional (*Kuryla v. Halabi*, 39 AD3d 485 (2nd Dept., 2007)). Hence, plaintiffs' first cause of action against defendants Wheels, Inc. based on vicarious liability is dismissed.

The Court has examined the Complaint in a manner consistent with uncontested law. "To determine whether a pleading is sufficient to withstand a challenge under CPLR 3211[a][7], the court must consider whether the pleading, taken as a whole, fails to state a cause of action. Looseness, verbosity and excursiveness, must be overlooked on such motion if any cause of action can be

spelled out from the four corners of the pleading" (*Foley v. D'Agostino*, 21 AD2d 60 (1st Dept., 1964)).

The defendants' motion pursuant to CPLR 3211 (a)(7) is denied as to defendants Hoffman, LaRoche and The Roche Group as lessors of the car driven by defendant Goldstein.

Dated: October 23, 2007.


Anthony L. Parga, J.S.C.