

2022 WL 18584349

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United States District Court, W.D. Pennsylvania.

Emily M. BURNS, in Her Own Right
and as Administratrix of the Estate of
Matthew T. Burns, Deceased, Plaintiff,

v.

SHAMA EXPRESS, L.L.C. et al., Defendants.

Civil Action No. 22-113

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Signed December 20, 2022

Attorneys and Law Firms

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Jared Matthew Smith, Salvatore A. Clemente, Wilson Elser Moskowitz Edelman & Dicker LLP, Philadelphia, PA, for Defendant Amazon Logistics, Inc.

Re: ECF No. 44

REPORT AND RECOMMENDATION

MAUREEN P. KELLY, UNITED STATES MAGISTRATE
JUDGE

I. RECOMMENDATION

*1 Plaintiff Emily M. Burns (“Plaintiff”), in her own right and as Administratrix of the Estate of Matthew T. Burns (“Mr.

Burns”), brings this action against various Defendants arising out of a fatal traffic accident.

Presently before the Court is a Motion to Dismiss filed by Defendant BSE Trailer Leasing, L.L.C. d/b/a Bowman Trailer Leasing (“Bowman”).¹ ECF No. 44. For the reasons below, it is respectfully recommended that the Motion to Dismiss be denied.

II. REPORT

A. FACTUAL AND PROCEDURAL BACKGROUND

1. Factual Allegations

This action arises out of a motor vehicle crash that occurred on December 20, 2020 on the westbound lanes of Interstate 80 (“I-80”) in Clearfield County, Pennsylvania. ECF No. 43 ¶¶ 53, 67. Early that morning, a tractor-trailer driven by Defendants Mohammed Akbari (“Akbari”) and/or Dilawar Ali Shah (“Ali Shah”) (the “First Tractor-Trailer”) and owned or operated by Defendants Shama Express, L.L.C. (“Shama”), Falcon Trucking, L.L.C. (“Falcon”), Bowman and/or Amazon Logistics, Inc. (“Amazon”),² was traveling in snowy weather conditions. *Id.* ¶¶ 53, 55.

At or around mile marker 110.4, Akbari and/or Ali Shah were allegedly driving at an unsafe speed and lost control of First Tractor-Trailer. *Id.* ¶ 56. The tractor-trailer jackknifed and came to an uncontrolled stop, blocking the entire left lane and part of the right lane of the westbound lanes of I-80. *Id.* ¶ 57. Plaintiff claims that Akbari and/or Ali Shah did not activate the hazard lights and, upon information and belief, that one or more of the braking systems was not properly maintained. *Id.* ¶¶ 58-59.

Shortly thereafter, another tractor-trailer (the “Second Tractor-Trailer”) driven by Defendant Mark W. Eddy (“Eddy”) and owned by Defendants Frost Brook Trucking, Inc. (“Frost Brook”) and/or Robert Lee, Jr. (“Lee”) approached mile marker 110.4 in the right lane of the westbound lane of I-80 and the disabled tractor-trailer. *Id.* ¶ 60. Mr. Burns also was driving westbound in the left lane on I-80 in a 2007 Honda Odyssey with his family: Plaintiff, his wife, seated in the front right passenger seat and their three minor children, who were seated in the backseat. *Id.* ¶¶ 61-65.

Plaintiff claims that Eddy failed to reduce his speed and/or blocked access to the right lane of I-80, causing Mr. Burns to collide with the disabled First Tractor-Trailer and the Second Tractor-Trailer in the right lane of the roadway. *Id.* ¶¶ 66-67. As a result of this collision, Mr. Burns suffered fatal injuries. *Id.* ¶ 68.

2. Claims against Bowman

*2 In Count II, Plaintiff pleads a claim for negligence against Bowman, and she brings causes of action individually and on behalf of the Estate of Mr. Burns pursuant to Pennsylvania's Wrongful Death Act, 42 Pa.C.S. § 8301 (First Cause of Action), and Pennsylvania's Survival Act, 42 Pa. C.S. § 8302 (Second Cause of Action), as well as on her own behalf for negligent infliction of emotional distress (Third Cause of Action). *Id.* ¶¶ 74-76, 114-136.

3. Relevant Procedural History

Plaintiff initiated this action in the Court of Common Pleas of Philadelphia County, Pennsylvania on October 27, 2021. ECF No. 1 ¶ 1. On November 19, 2021, Defendants Akbari, Ali Shah, and Shama removed this action to the United States District Court for the Eastern District of Pennsylvania based on diversity jurisdiction, ECF No. 1, and the action later was transferred to this Court on January 13, 2022 under 28 U.S.C. § 1404(a), ECF Nos. 10, 11 and 13. Plaintiff originally brought claims against various Defendants, including BSE Trailer Leasing, L.L.C. ECF No. 1-1.

On July 7, 2022, Plaintiff moved for leave to amend her Complaint to include claims against additional Defendants, including Bowman Group, L.L.P. and Bowman Trailer Leasing. ECF No. 39. In support of her Motion, she attached a Lease Agreement between “Bowman Trailer Leasing” and Amazon dated September 14, 2020, purportedly identifying Amazon as the lessee of the trailer associated with the tractor-trailer driven by Ali Shah and/or Akbari during the incident (the “Lease”). *Id.* at 5, 106-07.

After the Court granted Plaintiff's motion, she filed the operative First Amended Complaint on July 12, 2022. ECF Nos. 40 and 43. In her First Amended Complaint, she included claims against BSE Trailer Leasing, L.L.C., Bowman Group, L.L.P., and Bowman Trailer Leasing (collectively, the

“Bowman Entities”). She did not attach a copy of the Lease or refer to it in her First Amended Complaint.

Defendants Shama, Akbari, and Ali Shah filed an Answer on August 29, 2022. ECF No. 70. Defendants Frost Brook, Lee, and Eddy filed an Answer on August 21, 2022. ECF No. 76. In their Answers, Defendants Shama, Akbari, Ali Shah, Frost Brook, Lee, and Eddy pleaded cross-claims against various other Defendants, including the Bowman Entities.



On September 21, 2022, counsel for Plaintiff, the Bowman Entities, and Amazon filed a proposed Stipulation and Order to Substitute Certain Party Defendants, Dismiss Certain Party Defendants without Prejudice, and Amend the First Amended Complaint and Case Caption (the “Stipulation”). ECF No. 77. In relevant part, it was stipulated that Plaintiff's First Amended Complaint would be deemed amended to change the name of “BSE Trailer Leasing, L.L.C.” to “BSE Trailer Leasing, L.L.C. d/b/a Bowman Trailer Leasing”; that the caption would be amended to reflect this change; and that Bowman Group, L.L.P. and Bowman Trailer Leasing were dismissed without prejudice and removed from the caption, the First Amended Complaint, and future filings. *Id.* ¶¶ 5-7. The Court entered an Order approving the Stipulation on September 20, 2022. ECF No. 83.

Counsel for Plaintiff, Frost Brook, Lee, Eddy, the Bowman Entities, Amazon, Shama, Akbari, and Ali Shah subsequently filed a proposed Joint Supplemental Stipulation, agreeing that the Stipulation also applied to cross-claims filed in this action. ECF No. 106. The Court entered an Order approving the Joint Supplemental Stipulation. ECF No. 107.

4. Motion to Dismiss

*3 Bowman filed this Motion to Dismiss and Brief in Support on July 26, 2022. ECF No. 44. Plaintiff filed a Response in opposition. ECF No. 46. The Motion to Dismiss is now ripe for consideration.

B. LEGAL STANDARD

In assessing the sufficiency of a complaint pursuant to a motion to dismiss under  Federal Rule of Civil Procedure 12(b)(6), the Court must accept as true all material allegations in the complaint and all reasonable factual inferences must be viewed in the light most favorable to the plaintiff.  [Odd](#)

v. Malone, 538 F.3d 202, 205 (3d Cir. 2008). The Court, however, need not accept bald assertions or inferences drawn by the plaintiff if they are unsupported by the facts set forth in the complaint. See Cal. Pub. Employees' Retirement Sys. v. The Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004) (citing Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997)). Nor must the Court accept legal conclusions set forth as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Id. (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). Indeed, the United States Supreme Court has held that a complaint is properly dismissed under Fed. R. Civ. P. 12(b)(6) where it does not allege “enough facts to state a claim to relief that is plausible on its face,” id. at 570, or where the factual content does not allow the court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see also Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008) (finding that, under Twombly, “labels, conclusions, and a formulaic recitation of the elements of a cause of action” do not suffice but, rather, the complaint “must allege facts suggestive of [the proscribed] conduct” and that are sufficient “to raise a reasonable expectation that discovery will reveal evidence of the necessary element[s] of his claim”).

C. DISCUSSION

In support of the Motion to Dismiss, Bowman refers the Court to the Lease, which it purports to show that Bowman's only involvement was to lease the subject trailer on September 14, 2020. ECF No. 44-1 at 4-5. Based on this, Bowman argues that: (1) Plaintiff does not sufficiently plead a negligence claim against it relative to an accident that occurred more than three months after the Lease was signed; and (2) given that Bowman was a lessor, only, vicarious liability is precluded by the Graves Amendment to the Safe, Accountable Flexible and Efficient Transportation Equity Action of 2004, 49 U.S.C. § 30106(a). Id. at 4-7.

In response, Plaintiff argues that Bowman improperly relies on the Lease (an unverified, unauthenticated, and extrinsic document at this preliminary stage) and simply ignores relevant allegations of negligence in her pleadings. ECF No. 46-1 at 6-9. As an owner and operator of a moving vehicle, she

argues, Bowman, through its employees, owed a duty to be alert and maintain control of the vehicle. Id. at 9 (citing Hardy v. Clover Leaf Mills, 232 A.2d 755 (Pa. 1967); Kindt v. Reading Co., 43 A.2d 145 (Pa. 1945)). Plaintiff refers the Court to allegations in the First Amended Complaint that Bowman, directly and through its employees, servants, or agents, breached those duties. Id. at 9-10 (citing ECF No. 43 ¶¶ 8-19, 74-76). Because Plaintiff asserts a plausible negligence claim against Bowman, she argues, the Graves Amendment does not provide immunity. Id. at 11-15.

*4 Upon review, the Court should deny the Motion to Dismiss. While Bowman tries to limit its alleged involvement to the single act of leasing a trailer three months before the accident, that is not what Plaintiff actually claims. In her First Amended Complaint, Plaintiff alleges that Bowman was the titled owner, registered owner, lessee, and/or lessor of the First Tractor-Trailer, and that Bowman acted by itself or through its agents, servants, or employees including Akbari, Ali Shah, Shama and/or Falcon. Id. ¶¶ 8-19, 75.

Count II alleges a cause of action sounding in negligence against Bowman for its own acts and omissions, as well as for the acts and omissions of the operator of the First Tractor-Trailer in causing the accident. Id. ¶¶ 74-76. In particular, Plaintiff claims that Bowman was negligent pursuant to *respondeat superior* for the negligent and careless acts of its agents, including: operating the tractor-trailer in a careless manner under the circumstances and in violation of traffic laws; failing to maintain control of the vehicle and allowing it to jackknife; failing to activate the hazard lights after the tractor-trailer jackknifed in the middle of the highway; and failing to properly secure the scene after blocking the roadway, illuminate the subject vehicle, and warn approaching vehicles. Id. ¶ 75(a), (d)-(e), (j), (l), (o), (ff), and (gg).

Plaintiff also claims that Bowman was negligent by failing to properly train and supervise its agents, servants, and/or employees and to establish, implement, and enforce policies and procedures related to the safe inspection, maintenance, and operation of the vehicle. Id. ¶ 75 (v)-(ee). Further, she claims that Bowman was negligent in failing to determine or assess the qualifications of its drivers, failing to exercise reasonable care in their employment, and failing to enact policies and procedures to ensure that its agents were properly screened, monitored, and audited relative to their operating motor vehicles and transporting cargo. Id. ¶¶ 75 (kk)-(xx).

Based on these allegations, she sufficiently pleads a claim for negligence against Bowman.

Furthermore, the Graves Amendment does not preclude liability based on the pleadings. The Graves Amendment provides:


(a) In general.—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).


 49 U.S.C. § 30106.

Thus, “[t]he Graves Amendment precludes imposition of liability on a company ‘engaged in the trade or business of renting or leasing motor vehicles’ based *solely* on the company's ownership interest in the at-issue vehicle.” [Petit v. Penske Tr. Leasing Corp.](#), No. 1:18-cv-187, 2019 WL 1571067, at *3 (M.D. Pa. April 11, 2019). It does not “protect

entities accused of negligence or criminal wrongdoing.” [Id.](#) (citing  49 U.S.C. § 30106(a)(2)). Because Plaintiff has sufficiently alleged, at this initial stage, that Bowman was negligent, the Graves Amendment cannot serve as a basis for immunity. For these reasons, the Court should deny the Motion to Dismiss.

D. CONCLUSION

*5 For the foregoing reasons, it is respectfully recommended that the Court deny Bowman's Motion to Dismiss, ECF No. 44.

In accordance with the Magistrate Judges Act,  28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Objections are to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to timely file objections will waive the right to appeal. [Brightwell v. Lehman](#), 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may file their response to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

All Citations

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Footnotes

- 1 This Motion was filed on behalf of Defendants BSE Trailer Leasing, L.L.C., Bowman Group, L.L.P., and Bowman Trailer Leasing. However, the parties subsequently filed stipulations to amend the name of the party “BSE Trailer Leasing, L.L.C.” to “BSE Trailer Leasing, L.L.C. d/b/a Bowman Trailer Leasing” and to dismiss the direct and cross-claims against Defendants Bowman Group, L.L.P. and Bowman Trailer Leasing. ECF Nos. 77 and 106.
- 2 Plaintiff refers to this entity as Amazon.com, Inc. in the First Amended Complaint. However, the parties stipulated to substitute this defendant with Amazon Logistics, Inc. ECF No. 83 ¶ 2.