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CASE LAW DEVELOPMENTS

Majority of Court of Appeals Holds That Graves Amendment Preempts VTL § 370's Requirement That Rental Companies Provide Primary Liability Insurance Coverage to Renters

To Rule Otherwise Would Defeat Purpose of Amendment

Second Child v. Edge Auto, Inc., 2026 N.Y. Slip Op. 02436 (April 23, 2026) concerns the Graves Amendment (49 U.S.C. § 30106), which abolished vicarious liability of automobile lessors for damages caused solely by the negligence of the operators (customers) of leased vehicles. In fact, a New York State statute, Vehicle and Traffic Law (VTL) § 388, was one of the state statutes targeted by the Amendment, because it imposes limitless liability on rental car companies arising out of accidents caused by the renters' negligence. The issue in this case was whether that federal statute preempted VTL § 370's primary insurance requirement. Specifically, that section provides that rental car companies "shall file with the commissioner of motor vehicles . . . evidence . . . of a corporate surety bond or a policy of insurance;" and "[a]ny such bond or policy of insurance . . . shall inure to the benefit of any person legally operating the motor vehicle." In *ELRAC, Inc. v Ward*, 96 N.Y.2d 58, 78 (2001), decided prior to the enactment of the Graves Amendment, the New York State Court of Appeals interpreted the "shall inure to the benefit" language to "require[] rental car companies to provide primary insurance to their renters up to the minimum liability limits provided by the statute."

Ultimately, a narrow majority of the Court in *Second Child* held that VTL § 370's requirement that rental car companies carry a specified minimum amount of insurance coverage is *not* preempted, but the requirement that rental companies provide primary liability insurance coverage to renters was preempted, and does not fall within the Graves

Amendment's savings clause.

The Graves Amendment preemption clause states, in relevant part:

An owner of a motor vehicle that rents or leases the vehicle to a person . . . shall not be liable under the law of any State . . . by reason of being the owner of the vehicle . . . 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 . . . 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 (49 U.S.C. § 30106(a)).

The statute has a savings clause, however, that limits its preemptive effect:

Nothing in this section supersedes the law of any State . . .

- (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or
- (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law (§ 30106(b)).

The Court initially noted that the Graves Amendment clearly preempted VTL § 388 which, as noted above, expressly provides that rental car companies are vicariously liable for accidents solely caused by their renters. However, the issue here was whether the primary liability insurance requirement under VTL § 370 (as interpreted by the Court in *Ward*), was also preempted, or survives under the Graves Amendment savings clause.

IN THIS ISSUE

Majority of Court of Appeals Holds That Graves Amendment Preempts VTL § 370's Requirement That Rental Companies Provide Primary Liability Insurance Coverage to Renters

Generally, Sur-Reply Motion Papers Are Not Permitted

New York State Is a Permissive Counterclaim Jurisdiction Issue of Availability of CPLR 205(a) Resolved in First Action

Trial Court Erred in Dismissing Action Sua Sponte Based on Plaintiff's Service of Pleadings Prior to Commencement

Order Resulting From Letter Application Held To Be Reviewable

The savings clause excludes state laws “imposing financial responsibility or insurance standards” on motor vehicle owners, but provides no definition of those terms. The majority found, in accord with other jurisdictions, that “in this context ‘financial responsibility’ refers to ‘state laws which require either liability insurance or a functionally equivalent financial arrangement.’” The Court concluded that

[a]n interpretation of section 370 as containing a primary liability insurance requirement does not fit within that definition. As *Ward* explains, section 370 works in tandem with section 388 to require car rental companies to insure against the vicarious liability that section 388 imposes for damages caused by a renter driving the company’s vehicle, resulting in the primary insurance requirement. But, as discussed, section 388 is clearly preempted by the Graves Amendment, which expressly prohibits states from imposing such liability. In view of this Court’s interlocking interpretation, as section 388 falls, so too must section 370’s primary insurance requirement. To conclude otherwise would be to require car rental companies to insure against liability that federal law commands they no longer face. This is precisely the type of absurd result, contrary to well-settled insurance law, that bedrock interpretive principles instruct us to avoid (citations omitted).

Id. at *3.

The Court stressed that the Graves Amendment primary objective to remove vicarious liability for rental car companies applies, no matter what form it takes, including the primary insurance requirement here:

Concluding that section 370, as interpreted by *Ward*, is protected by the savings clause would recognize that rental companies no longer face vicarious liability, but nonetheless require that these companies obtain insurance for such liability and defend and indemnify customers in lawsuits arising from their own negligence. Section 370’s primary insurance requirement would, in effect, become a vicarious liability regime masquerading as a financial responsibility statute, in violation of federal law. This “workaround” to the Graves Amendment would undermine its core purpose.

Id.

The Court insisted that its decision here was consistent with other jurisdictions’ interpretation of the Graves Amendment, preempting state statutes imposing liability on rental car companies for their renters’ negligence, regardless of the form of liability. The majority added that its ruling did not eliminate rental car companies’ liability for damages caused by *their own negligence* or criminal wrongdoing. In addition, the Graves Amendment did not prohibit New York from requiring rental car companies to secure insurance for its liability or for the privilege of registering cars in New York.

Finally, the Court needed to address the McCarran-Ferguson Act (see 15 U.S.C. § 1012), which grants states the primary authority to regulate and tax the insurance in-

dustry, constraining federal preemption. Thus, “the federal preemption of a state insurance law is prohibited where ‘(1) the federal statute in question does not specifically relate to insurance; (2) the state law at issue was enacted to regulate the business of insurance; and (3) the federal statute at issue would invalidate, impair, or supersede the state law (citations omitted).’” *Id.* at *4.

The Court found that there was no dispute that the Graves Amendment and VTL § 370 satisfied the first two prongs, and thus focused on the third one:

As the U.S. Supreme Court has recognized, a federal law is reverse preempted by virtue of the McCarran-Ferguson Act when the federal law (1) invalidates the state law, meaning “render[s] the state law] ineffective;” (2) supersedes the state law, meaning “displace[s]” the state law; or (3) impairs the state law, meaning, the federal law “frustrate[s] a [] declared state policy or interfere[s] with a [s]tate’s administrative regime.” Here, as already discussed, section 370 survives as a requirement that companies maintain minimum insurance obligations even after the Graves Amendment. Although precluding section 370’s primary liability insurance requirement might be characterized as an “impairment,” that impairment fundamentally relates to vicarious liability; any conflict pertaining to insurance only arises secondarily to the question of liability. Section 370’s requirement that rental companies obtain an insurance policy, file a surety bond, or file a certificate of self-insurance remains in effect. Because the impairment here does not relate to the business of insurance, the McCarran-Ferguson Act is not offended, and the Graves Amendment is not reverse preempted (citation omitted).

Id.

The dissent stated that there is nothing in the Graves Amendment that proscribes states from requiring car rental companies to maintain liability insurance. Moreover, the Graves Amendment savings clause carved out state laws like VTL § 370, which are not the target of the Amendment and which require rental companies to maintain minimum insurance amounts. In fact,

the savings clause shows that Congress intended to preserve state laws like VTL 370. Because, as the majority acknowledges, Congress’ target was “unlimited vicarious liability schemes,” VTL 370 would not be a proper target, because the liability it imposes is capped at the statutory minimums. An insurance requirement for rental car companies capped at \$25,000 for bodily injury and \$10,000 for property damage is worlds apart from unlimited vicarious liability. Preemption of VTL 370 is neither necessary nor sufficient to achieve Congress’s aim of eliminating vicarious liability; preemption of VTL 388 as to car rental companies achieves that aim on its own.

Id. at *8.

Generally, Sur-Reply Motion Papers Are Not Permitted

However, Trial Court Has Discretion To Consider Them

On a 16-7-1 motion, generally only answering and reply papers are permitted. Thus, 22 N.Y.C.R.R. § 202.8-c provides that absent express permission in advance, sur-reply papers are not permitted and will not be read or considered. In the event there are relevant post-submission decisions, they can be provided to the court by letter, but with no additional argument. *See also* Commercial Division Rule 18, 22 N.Y.C.R.R. § 202.70(g), Rule 18; *Bac Home Loans Servicing, LP v. Uvino*, 155 A.D.3d 1155 (3d Dep’t 2017) (“Initially, defendants argue that Supreme Court erred in declining to consider their surreply papers. The record does not contain any support for their argument that the parties stipulated that defendants could submit such papers, nor that the court approved of such submissions. Surreply papers are not explicitly permitted by the statute that addresses motion papers. That statute provides for a notice of motion and supporting affidavits, answering affidavits and supporting papers, and any reply or responding affidavits (citation omitted). The statute further states that ‘[o]nly papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct’ (citation omitted). Under the circumstances, where the record does not indicate that defendants ever sought permission from the court to submit surreply papers, we cannot conclude that the court abused its discretion in disregarding defendant’s surreply papers when deciding plaintiff’s motion (citations omitted).”).

Nevertheless, as part of a trial court’s authority to regulate motion practice, it can accept late papers or sur-reply papers for “good cause,” and courts have done so where there is a valid excuse, a short delay and the absence of prejudice. *See* CPLR 2214(c); *Lannon v. Everest Nat’l Ins. Co.*, 2026 N.Y. Slip Op. 02259 (2d Dep’t April 15, 2026); *U.S. Bank Trust, N.A. v. Rudick*, 156 A.D.3d 841 (2d Dep’t 2017) (“Here, the Supreme Court did not improvidently exercise its discretion in determining that it would consider the supplemental evidence sought to be submitted by the plaintiff. The plaintiff proffered a valid excuse, the delay was minimal, and there was no prejudice as the court also determined that it would give the defendant a full opportunity to respond to, and submit further evidence addressing, the plaintiff’s submissions (citations omitted).”).

New York State Is a Permissive Counterclaim Jurisdiction

However, Related Ones May Be Barred From Being Asserted in a Subsequent Action

Federal and state practice differ on the assertion of counterclaims. Generally, in federal court, related counterclaims are compulsory. FRCP 13(a) provides that:

(a) Compulsory Counterclaim.

(1) In General. A pleading must state as a counterclaim

any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

Conversely, in New York practice counterclaims are permissive. *See* CPLR 3011 and 3019. Nevertheless, generally, a New York defendant in state court would not forego asserting a counterclaim because it is unlikely to derive any particular benefit from doing so.

However, while “[o]ur permissive counterclaim rule may save from the bar of *res judicata* those claims for separate or different relief that could have been but were not interposed in the parties’ prior action,” it does not “permit a party to remain silent in the first action and then bring a second one on the basis of a preexisting claim for relief that would impair the rights or interests established in the first action.” *Henry Modell & Co. v. Minister, Elders & Deacons of Ref. Prot. Dutch Church of City of N.Y.*, 68 N.Y.2d 456, 462 n. 2 (1986). Moreover, a majority of the Court of Appeals has held that a claim not asserted in a prior federal court action as a (compulsory) counterclaim was barred in a subsequent state court action under the doctrine of *res judicata*. *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 N.Y.3d 64 (2018).

Recently, in *Berry v. Batash*, 2026 N.Y. Slip Op. 01755 (2d Dep’t March 25, 2026), the defendant Berry pled causes of action in this action that could have been asserted as counterclaims in a prior state court action, but were not. The Second Department held, however, that Berry was not precluded from asserting the claims here because, if he “were successful on those causes of action, this would not impair the rights that were or could be established in the prior action with respect to him (citations omitted).”

Issue of Availability of CPLR 205(a) Resolved in First Action

Thus, Defendants Were Collaterally Estopped From Relitigating Issue in Second Action

Silverman v. Pret a Manger (USA) Ltd., 2026 N.Y. Slip Op. 01929 (1st Dep’t March 31, 2026) involved CPLR 205(a), which we have addressed in the *Law Digest* frequently, including most recently in the March, 2026 *Law Digest*.

In action #1, in opposition to the defendants’ motion to dismiss, the plaintiff asserted that if the action were dismissed, the dismissal should be subject to recommencement under CPLR 205(a). The defendants countered that the CPLR 205(a) issue was premature, and regardless, CPLR 205(a) was unavailable to the plaintiff because any new action would be untimely “and thus outside of CPLR 205(a)’s safe harbor.” The trial court dismissed the action without prejudice, finding that “CPLR 205(a) authorizes recommencement of an action even if the plaintiff lacked capacity to sue at the time the original action was commenced.”

Here, in action #2, the defendants sought to relitigate the CPLR 205(a) issue. The First Department held that the defendants were collaterally estopped from doing so:

Defendants are precluded from relitigating that issue on this motion, because the motion court determined the CPLR 205(a) issue in dismissing the prior action without prejudice. The parties disputed the issue, and the court resolved it, rendering the issue “necessarily . . . decided.” Defendants addressed the issue squarely on the merits in their reply papers in the prior action and therefore failed to meet their “burden of demonstrating the absence of a full and fair opportunity to contest the prior determination” (citations omitted).

Id. at *2.

The court stressed that “courts adjudicating dismissals in the first instance routinely determine the propriety of recommencement under CPLR 205(a) in deciding whether to dismiss with or without prejudice. If parties could relitigate a CPLR 205(a) issue in a refiled action it would constitute a waste of judicial resources and risk inconsistent results (citations omitted).” *Id.*

Trial Court Erred in Dismissing Action Sua Sponte Based on Plaintiff’s Service of Pleadings Prior to Commencement

Motion Under CPLR 306-b Was Required

In the July, 2024 edition of the *Law Digest*, we discussed the Second Department decision in *Wells Fargo Bank, N.A. v. St. Louis*, 229 A.D.3d 116 (2d Dep’t 2024), cautioning that a court’s power to dismiss a complaint, sua sponte, is to be used sparingly and is permitted only where there are extraordinary circumstances warranting dismissal. See David L. Ferstendig, *Second Department Provides Primer on Reasons for Not Permitting Sua Sponte Dismissals Absent Extraordinary Circumstances*, 764 N.Y.S.L.D. 4 (2024).

In *Briggs v. Fresenius*, 2026 N.Y. Slip Op. 01827 (3d Dep’t March 26, 2026), the pro se plaintiff first served the defendants with a “Notice of Motion of Claim” and “Affidavit in Support of Notice of Claim” and then commenced the action by *subsequently* filing those documents. After the defendants did not appear, the trial court construed the papers the plaintiff served as a summons and complaint and sua sponte dismissed the action. The court concluded that it lacked personal jurisdiction over the defendants because plaintiff’s attempted service *prior* to commencement was a nullity.

A majority of the Third Department held that the trial court erred in dismissing the action sua sponte. It referred to CPLR 306-b which states, in part, that “[i]f service is not made upon a defendant within the time provided in this section, the court, *upon motion*, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service” (emphasis added). The court stated that “[i]n consideration of this express language, other Departments of the Appellate Divi-

sion have recognized that a court cannot dismiss a complaint on its own initiative for lack of personal jurisdiction based upon the failure to effect proper service of process.” *Id.* at **1–2. A motion by one of the parties was required.

Order Resulting From Letter Application Held To Be Reviewable

Subsequent Motion To Reargue Provided Necessary Basis To Appeal

In the March, 2026 edition of the *Law Digest*, we reported on *Perrotte v. Bloomberg, L.P.*, 246 A.D.3d 480 (1st Dep’t 2026) where the subject order “resolved plaintiff’s letter application, which defendants opposed through their own letter submissions. Under these circumstances, the process afforded the parties the opportunity to be heard and created a proper record for appellate review.” See David L. Ferstendig, *Status Conference Orders Generally Not Appealable as of Right*, 784 N.Y.S.L.D. 4 (2026).

In *Almodovar v. City of New York*, 2026 N.Y. Slip Op. 02053 (1st Dep’t April 7, 2026), a trial court order was entered upon a letter application, as opposed to a motion made on notice. The Appellate Division noted that “litigation by letter” is not authorized by the CPLR, is unfavored and the resulting order generally not appealable as of right. The proper procedure is for the aggrieved party to move to vacate the order and the denial of that motion is appealable.

Here, while the original application (motion to dismiss) was done via letter, plaintiff moved to reargue, which motion was fully briefed. This, the court found was, “in sum and substance,” the same as moving to vacate and the subsequent order was appealable. Thus, the First Department could review the earlier order.

Another issue in the case was that oral argument on the defendants’ motion to dismiss was held before a different Justice than the Justice who decided the motion. The First Department held that that did not require that the order be vacated:

Although Judiciary Law § 21 provides that a Supreme Court Justice “shall not decide or take part in the decision of a question, which was argued orally in the court, when he was not present and sitting therein as a” Justice, reversal is not warranted on this ground because defendants’ motion to dismiss pursuant to CPLR 3211(a)(7) presented purely legal questions (citations omitted).

Id.