

Pepe v Juckas Stables, Inc.

2010 NY Slip Op 33671(U)

December 9, 2010

Sup Ct, New York County

Docket Number: 114734/2008

Judge: O. Peter Sherwood

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: O. PETER SHERWOOD
Justice

PART 61

DONNA PEPE,

Plaintiff,

-against-

JUCKAS STABLES, INC., et al.,
Defendants.

INDEX NO. 114734/08

MOTION DATE July 6, 2010

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion for summary judgment

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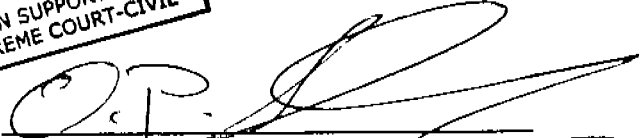
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3</u>
Replying Affidavits _____	<u>4</u>

Cross-Motion: Yes No

Upon the foregoing papers, defendants' motion, pursuant to CPLR § 3212, for summary judgment dismissing the complaint is decided in accordance with the accompanying decision and order.

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Dated: 12/9/10


O. PETER SHERWOOD, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
DONNA PEPE,

Plaintiff,

-against-

JUCKAS STABLES, INC., KAREN JUCKAS HOSSAN,
and JANE DOE (a Trail Ride Guide)
Defendant.

-----X
O. PETER SHERWOOD, J.:

DECISION AND
ORDER

Index No. 114734/2008

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In this negligence action to recover damages for personal injury, defendants move for summary judgment dismissing the complaint. Plaintiff opposes the motion. For the reasons that follow, the motion is granted and the complaint is dismissed.

Factual Background

On September 20, 2008, plaintiff Donna Pepe allegedly was injured when she fell from a horse while on a trail ride at premises owned by defendant Juckas Stables, Inc. ("Juckas Stables"), a riding stable located in Orange County, New York. Defendant Karen Juckas Hossan, President, sole officer and shareholder of Juckas Stables, stated at her deposition that in September 2008, Juckas Stables consisted of 117 acres. It owned 22 horses and had two part-time wranglers, Carol Livingston ("Cal") and Chris Atkinson ("Chris"). Ms. Hossan supervised and managed the operation of Juckus Stables. Plaintiff contends in her bill of particulars that the horse she was riding at the time of her accident had known vicious propensities in that it was not specifically bred or trained to be ridden, was an improper candidate to be a trail horse based upon his age, weight and girth, and was known to have a history of bucking (Affirmation of Rennee A. Breitner in Support of Motion [Breitner Affirm.], Ex. "C"). Plaintiff contends that defendants knew of such horse's vicious propensities and, therefore, are strictly liable for the injuries she sustained. Plaintiff contends further that her injuries were caused by defendants' negligence in failing to advise her of the subject horse's dangerous nature, to inquire as to plaintiff's experience as a rider so as to determine if she was a proper candidate to ride such horse, or to guide and instruct her in the proper handling of such horse.

Plaintiff, thirty-nine years old at the time of the accident, testified at her deposition that she had never taken any horseback riding lessons and first rode a horse at the age of twenty-three for about one hour with a group in Prospect Park (Breitner Affirm. ¶ 9, Ex. “D”, Pl’s EBT pp. 8, 17). Plaintiff did not ride a horse again until she was 33 years old when she went to the Dominican Republic. That ride consisted of an hour-long group ride on a trail and the beach in which the riders walked the horses and did not trot, canter or gallop for fear of overheating the horses (*id.* pp. 14-15). From the age of 33 to the age of 39, plaintiff rode about once a year for an hour each time (*id.* p. 14). Four of those rides were at the same small stable in the Dominican Republic (*id.*). The fifth time plaintiff rode during this period was at a stable in Cancun in the course of which she trotted on a horse for a short distance (*id.* p. 17).

On September 20, 2008, plaintiff proceeded from Manhattan to Juckas Stables with seven people from a group called Northeast Hiking that she had found through Meetup.com., an internet website designed to link people with similar interests. The group was scheduled for a two-hour trail ride which was to begin at 11:00 a.m. However, the group got lost and arrived late. Upon their arrival, the group was met by Ms. Juckas who handed the group leader release forms and instructed him to have each person write down his or her name and address (*id.* pp. 31-32). The form titled “Participant Agreement, Release and Assumption of Risk”, signed by plaintiff, was introduced at her deposition and provides, in pertinent part, as follows:

1. I acknowledge that horseback trail rides and lessons entail known and unanticipated risks which could result in physical or emotional injury, paralysis, death, or damage to myself, to property or to third parties. I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity.

* * *

2. I expressly agree and promise to accept and assume all the risks existing in this activity. My participation in this activity [is] purely voluntary, and I elect to participate in spite of the risks.
3. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless [Juckas Stables] from any and all claims, demands, or causes of action, which are in any way

connected with my participation in this activity or my use of [Juckas Stables'] equipment or facilities (Ex. "E").

After signing the release, plaintiff went with her group to the tack room in a barn where she picked out a helmet and was then led out of the barn by Cal who was going to be leading their trail ride (*id.* pp. 34-35). Prior to selecting a horse for plaintiff, Ms. Hossan asked plaintiff what level of riding experience she had. Plaintiff responded that she had experience (*id.* p. 38). Plaintiff testified that Cal and Ms. Hossan selected a five-year-old, gray and white Percheron named Romeo for her. Romeo was larger than the other horses at the stable, measuring somewhere between five and one-half feet (according to Ms. Hossan Ex. "F", p. 65) to approximately six feet (according to Chris Atkinson Pl's Ex. "1", p. 23), and weighing between 1200 to 2000 pounds (Ex. "F", p. 65; Ex. "H", pp. 84-85; Pl's Ex. "1", p. 89). Cal led Romeo to a mounting block, saddled and placed the reins on him, and then assisted plaintiff in mounting Romeo, which she did without difficulty (Ex. "D", pp. 40-43).

After all members of the group had mounted their horses, Cal lined them up in the order that they would proceed on the trail ride. Cal's horse was the lead horse, followed by another horse. Plaintiff and Romeo were in the third position (*id.* p. 50). After all the horses were lined up, Cal led them to a corral where the riders walked in a circle while Ms. Hossan observed them to determine if they were in proper riding position (*id.* p. 53). They then proceeded as a group to another field where they were again met by Ms. Hossan, who plaintiff claimed indicated she did not like Romeo's position in the lineup next to the particular horse that was second (*id.* pp. 55-56). After Cal assured Ms. Hossan that it was fine and she would "take care of it", Ms. Hossan left and the group proceeded to leave the field and walk on a dirt trail through a wooded area (*id.* p. 56). Plaintiff and Romeo were still third in the lineup (*id.*). When they reached the perimeter of another field about five minutes later, Cal asked if anyone wanted to trot (*id.* p. 58). Plaintiff and two other girls in the group responded affirmatively (*id.* pp. 58-59). At this point Cal advised plaintiff that Romeo liked to put his head down between his knees and try to buck the rider. Cal told plaintiff several times that if Romeo tried to do this, she should pull his head up with the reins and not let him do it (*id.* p. 59). Cal also told plaintiff that she had been working with Romeo to correct this behavior (*id.*). Plaintiff

expressed concern, but Cal assured her that she “was pretty sure she had gotten all the kinks out”(id. p. 60). Plaintiff did not request another horse.

Cal led plaintiff and two other women to another area, while Chris remained with the rest of the group. The group plaintiff was in proceeded to trot on their horses parallel to one another for a minute or two before Cal had them slow to a walk. Nothing eventful occurred during this initial trot. They reunited with the other group after which Cal again asked if anyone wanted to trot. The same group as before indicated they did (id. pp. 66-67). They proceeded back through the wooded area into the field where they had trotted before (id. p. 69). Plaintiff claims that Cal then took off without warning with plaintiff and the other two riders following. Instead of trotting, they were at a full run (id.). Plaintiff had never run on a horse before. During the run that lasted less than a minute, Romeo started to put his head down between his knees and plaintiff pulled his head up as she had been instructed. Romeo repeated this behavior two or three times and each time plaintiff pulled on the reins to pull his head up (id. pp. 70-71). The third time Romeo put his head down, plaintiff pulled on the reins but was unable to get his head up. She then had the sensation of being up in the air. Her feet were dislodged from the stirrups and she was thrown from the horse, hitting the ground on her tail bone and sustaining injuries (id. pp. 73-77).

Ms. Hossan testified at a deposition that she purchased Romeo in 2006 from a man in Gardiner, New York. She was told at the time that Romeo was three years old (Ex. “F”, p.19). Prior to purchasing the horse, Ms. Hossan asked the owner whether Romeo was gentle and she observed Romeo for about fifteen minutes being ridden and put through different paces by her wrangler. She saw no problems with the horse and purchased him. In September 2008, Romeo was Juckus Stables’ newest horse and, because of his large size, Ms. Hossan assigned him to big, experienced people (Ex. “F”, p. 31). Ms Hossan denied that any of her wranglers had told her that Romeo would put his head between his legs or that he bucked. She claimed that she had a reputation of having good horses, gentle horses that could be ridden and that she trusted, and she would not keep a horse that bucked (Ex. “G”, p. 100),

Ms. Hossan testified further that at Juckus Stables she questions all riders about their level of experience in horseback riding and makes a visual assessment of the customers, considering their respective size and observing how they approach the horses, before they go out on trail rides. She

is generally the person who assigns the horses to customers based upon her assessment (*id.* p. 53). After the riders mount their assigned horse, Ms. Hossan instructs them on how to hold the reins, sit properly on the horse, place their feet in the stirrups, stop the horse, and get the horse to go to the right or the left. She also tells riders to keep a distance of five or six feet between their horse and the horse in front of them and to pull the horse's head up with the reins if the horse tries to eat along the way (Ex. "F" pp. 66-70). She observes all riders walk in a circle once or twice around the paddock before they head out for the trail ride.

Ms. Hossan recalled that the group plaintiff was in arrived late for their trail ride on September 20, 2008, but she does not remember when they actually arrived. She remembered that plaintiff had expressed an interest in riding Romeo (Ex. "G", pp. 119-120). Ms. Hossan permitted plaintiff to ride Romeo after plaintiff told her that she was an experienced rider and, despite her initial objection, after she agreed to wear a helmet (*id.* p. 123, 125). Ms. Hossan observed plaintiff walking Romeo in the paddock and determined that she was an experienced rider based upon her posture, the way her heels were down and the manner in which she held the reins (*id.* p. 137). Because Romeo is a big horse with a long stride, Ms. Hossan would have wanted him to be first or second in the lineup on the trail ride (*id.* at 140). Ms. Hossan later learned from her wrangler Chris that plaintiff had fallen off Romeo (*id.* p. 145). The accident occurred about 1:15 p.m.

At her deposition, Cal, an experienced wrangler who began riding horses at eight years of age, testified that she began working at Juckus Stables in the summer of 2008. Her duties included feeding and tacking the horses, cleaning the barn and conducting trail rides and lessons (Ex. "H", p. 36). Her duties did not involve training horses (*id.* p. 9). Cal described Romeo as a mixed breed draft horse, part Percheron and part Belgian (*id.* p. 27). Although Cal recalled being told that Romeo was originally trained in Pennsylvania by Amish people as a "ride and drive" horse, that is to pull a cart, he also was ridden (*id.* p. 33). Although Cal preferred to ride a horse named Cracker as a lead horse on trail rides at Juckus Stables (*id.* p. 38), Cal claimed that she and the other wrangler Chris also rode Romeo as a lead horse. Sometimes she would ride Romeo and have him gallop just for fun, but not as a formal training (*id.* pp. 81-82). In addition, Romeo was ridden regularly by customers (*id.* pp. 38, 67). Cal claimed that Romeo had quite a fan club (*id.* p. 38). She denied that Romeo was reserved for any particular type of rider. She further denied that Romeo had a habit of putting

his head down or bucking (*id.* p. 37). Romeo had no problems with any other horse at Juckas Stables (*id.* p. 93).

Cal recalled advising plaintiff that if Romeo put his head down she should correct this by pulling back on the reins (*id.* pp. 78, 80). Plaintiff responded that she had ridden about ten times and it would not be a problem for her to pull Romeo's head up (*id.*). Based upon her own observations of plaintiff during the trail ride, Cal believed plaintiff to be a confident rider. Cal explained that Romeo, being a very large draft horse, would normally lower his head when he trotted or went at any speed above a trot (*id.*). Although Cal acknowledged that a rider could fall off Romeo if he were ridden at a run (*id.* p. 80), the pace during trail rides is either walking or trotting (*id.* p. 81).

Just prior to plaintiff's accident, Cal was leading the group in trotting. She had her horse at a canter pace to remain in front of the group and was partially twisted in her saddle during the duration of the ride to be able to talk with and observe the group (*id.* pp. 92-93). Cal did not notice Romeo putting his head down during the ride (*id.* p. 94). Plaintiff's accident occurred when Romeo, who was walking at the time, came too close to the horse in front of him and as he stepped to the right to avoid the other horse, plaintiff fell onto the ground off Romeo's right shoulder (*id.* p. 95). Cal asked plaintiff if she was o.k. and also inquired as to what happened. Plaintiff told her that her back hurt and that she did not know what had happened (*id.* pp. 98-99).

Chris, an experienced wrangler who began riding at the age of seven (Pl's Ex. "1", Chris Atkinson EBT, p. 10), testified at a deposition that she began working for Juckas Stables in April 2008 (*id.* pp. 11-12) and was employed there for less than a year (*id.*). Chris claimed that Cal was a big fan of Romeo and liked to use him because she thought he was a wonderful horse (*id.* p. 73). Chris stated that although she thought Cal was mostly working with Romeo because she loved him (*id.* p. 26), Cal had also told Chris that she was working with Romeo because of his habit of putting his head down. However, Chris said she never had a problem with Romeo lowering his head (*id.* pp. 26-27, 29) and she never saw him buck (*id.* p. 28). Chris used Romeo as a lead horse on at least three occasions and chose him because he was calm and was a good horse to have in front of a group (*id.* p. 33). Chris further described Romeo as a very quiet, good trail horse (*id.* pp. 101-102). However, because Romeo was so tall, Chris had more difficulty getting on and off him quickly if she needed to dismount to pick up something a customer dropped. Hence, because it was important

for her to get on and off the horse quickly, Chris tended to use another horse, Crackers, as the lead horse (*id.* pp. 34-35, 37).

During the trail ride on the date of plaintiff's accident, the group was split into two, with Chris remaining with the group that wanted to continue walking and the other group, including plaintiff, going with Cal because they wanted to trot (*id.* pp. 75, 79). At some point, Chris noticed that all the horses in Cal's group were standing around and she knew there was a problem. She rode up to the group and saw that plaintiff was on the ground and that Romeo was standing unattended nearby (*id.* pp. 80-81). Chris was told by someone in the group that plaintiff had fallen off her horse. No one indicated that plaintiff was bucked off her horse (*id.* pp. 81-82). Chris filled out an accident report based upon what either Cal, plaintiff, or a gentleman who was part of the group, told her (*id.* pp. 93-94). In response to a question on the accident form asking "Did the injured party state that he or she contributed to the accident in any way", the "Yes" box was checked with the statement "It was my fault. I lost my balance." (*id.* p. 95).

On or about November 3, 2008, plaintiff commenced the instant action against Juckus Stables, Ms. Hossan, individually, and "Jane Doe", "a trail ride guide". The amended complaint alleges two causes of action sounding in: (1) negligence based, *inter alia*, upon defendants' knowledge of Romeo's vicious propensities to buck riders, that Romeo was a draft horse not intended to be ridden, and their failure to properly assess plaintiff's level of experience, to warn her of Romeo's vicious propensities, or to guide and instruct her as to the proper handling of Romeo; and (2) strict liability for permitting a horse with known vicious propensities to be ridden.

By this motion, defendants seek to dismiss the complaint as against Ms. Hossan, individually, on the ground that as an officer and shareholder of defendant corporation, acting within the scope of those positions, she is not liable for the obligations of the corporation. Defendants also seek dismissal on the ground that plaintiff was aware of the dangers associated with horseback riding and assumed the risks inherent in that activity.

Discussion

Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established that there are no triable issues of fact (*see*, CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 329 [1986]; *Sillman v Twentieth Century-Fox Film Corporation*,

3 NY2d 395 [1957]). To prevail, the party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law tendering evidentiary proof in admissible form, which may include deposition transcripts and other proof annexed to an attorney's affirmation (see, *Alvarez v Prospect Hosp.*, *supra*; *Olan v Farrell Lines*, 64 NY2d 1092 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Absent a sufficient showing, the court should deny the motion without regard to the strength of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). However, once the initial showing has been made, the burden shifts to the party opposing the motion for summary judgment to rebut the prima facie showing by producing evidentiary proof in admissible form sufficient to require a trial of material issues of fact (see, *Kaufman v Silver*, 90 NY2d 204,208 [1997]). Although the court must carefully scrutinize the motion papers in a light most favorable to the party opposing the motion and must give that party the benefit of every favorable inference (see, *Negri v Stop & Shop, Inc.*, 65 NY2d 625 [1985]) and summary judgment should be denied where there is any doubt as to the existence of a triable issue of fact (see, *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]), bald, conclusory assertions or speculation and "a shadowy semblance of an issue" are insufficient to defeat a summary judgment motion (*S.J. Capalin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338 [1974]; see, *Zuckerman v City of New York*, *supra*; *Ehrlich v American Moninga Greenhouse Manufacturing Corp.*, 26 NY2d 255, 259 [1970]). The role of the court in deciding a motion for summary judgment is not to resolve issues of fact or to determine credibility issues, but simply to determine whether such issues of fact requiring a trial exist (see, *Powell v HIS Contractors, Inc.*, 75 AD3d 463 [1st Dept 2010]; *F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d 186 [1st Dept 2002]).

Under the doctrine of primary assumption of risk, a participant in a recreational activity "may be held to have consented, by [his or her] participation, to those injury-causing events which are known, apparent or reasonably foreseeable consequences of the participation" (*Turcotte v Fell*, 68 NY2d 432, 439 [1986]; see *Morgan v State of New York*, 90 NY2d 471, 484 [1997]; *Dalton v Adirondack Saddle Tours, Inc.*, 40 AD3d 1169, 1171 [3d Dept 2007]; *Kirkland v Hall*, 38 AD3d 497 [2d Dept 2007]). It has been consistently held that inherent in recreational or sporting events involving horses is injury caused by being kicked, bitten, falling, being thrown, or the horse acting

in a sudden or unintended manner (*see Stanislav v Papp*, ___ AD3d ___, 2010 WL 4721332 [1st Dept 2010]; *Dalton*, 40 AD3d at 1171; *Kirkland*, 38 AD3d at 498; *Tilson v Russo*, 30 AD3d 856 [3d Dept 2006]).

Here, the defendants have established, *prima facie*, their entitlement to judgment as a matter of law based upon evidence that plaintiff, who had sufficient experience riding horses to be aware and appreciate the known dangers of horseback riding, voluntarily mounted Romeo and proceeded with this recreational activity and, therefore, assumed the risk of her injuries when she was either thrown from the horse when he bucked or when she fell off.

In opposition, plaintiff claims a triable issue of fact exists as to whether defendants knew of and concealed Romeo's dangerous propensity to buck when ridden at a gait faster than a walk, whether defendants failed to provide plaintiff with a proper mount based upon her relative inexperience riding horses, and whether, since plaintiff could not have known of Romeo's concealed dangerous propensity, she may be said to have assumed the risk of being bucked when she proceeded to ride Romeo at a faster gait. The court finds that plaintiff has failed to raise a triable issue of fact as to defendants' negligence. Although plaintiff claims that both Cal and Chris concealed from Ms. Hossan that Romeo had a dangerous tendency to buck and thereby increased the inherent risks of the activity, the record does not support this allegation. Even accepting plaintiff's version of her accident, the court finds that the circumstances did not presented dangers over and above the usual dangers inherent in the sport of horseback riding such that defendants may be held liable for injuries caused by the horse (*see Tilson v Russo*, 30 AD3d 856, 858 [3d Dept 2006]; *cf. Haggerty v Zelnick*, 68 AD3d 721 [2d Dept 2009] [issue of fact whether defendants knew or should have known about horse's vicious propensity to rear and kick]; *Campbell v City of New York*, 31 AD3d 594 [2d Dept 2006]; *Lipari v Babylon Riding Center*, 18 AD3d 824 [2d Dept 2005] [[defendant knew of horse's dangerous behavior involving sudden bolting, running and rearing]).

Plaintiff elected to participate in this activity knowing that she could fall off or be thrown from the horse and chose to continue with the ride even after Cal advised her that Romeo might lower his head. Indeed, while she may not have appreciated the risk posed by this behavior when she first mounted Romeo, she certainly must have appreciated the risk after Romeo proceeded to lower his head on two occasions before the accident. On both occasions, plaintiff succeeded in

raising Romeo's head by pulling on the reins, as Cal had instructed. Moreover, "[i]t is not necessary to the application of assumption of risk that the injured plaintiff have foreseen the exact manner in which his or her injury occurred, so long as he or she is aware of the potential for injury of the mechanism from which the injury results" (*Maddox v City of New York*, 66 NY2d 270, 278; see *Tilson v Russo*, 30 AD3d 856, 858 [3d Dept 2006]; *Hund v Gramse*, 5 AD3d 1036, 1038 [4th Dept 2004]; *Papa v Russo*, 279 AD2d744, 745 [3d Dept 2001]).

Even considering the affidavit submitted in opposition of plaintiff's equestrian expert, Janet King, who identifies herself as an owner and operator of a business which organizes and provides trail rides and maintains horse stock, the court finds that plaintiff has not succeeded in raising an issue of fact precluding the grant of summary judgment. Ms. King states that defendants' wranglers, Cal and Chris, were negligent in failing to inform Ms. Hossan of Romeo's propensity to buck when ridden at a gait faster than a walk; that Ms. Hossan was negligent in failing to properly supervise her employees and learn that Cal was working with Romeo to break him of his dangerous propensities; that defendants were negligent in making Romeo available for trail rides; and that defendants were negligent in failing to properly assess plaintiff's level of experience and permitting her to ride Romeo. Ms. King's affidavit is predicated upon an assumption that is not established by the record, namely, that Romeo had a tendency to buck and that such behavior was concealed from plaintiff. The affidavit cannot create a legal duty of care where none existed. Here, plaintiff possessed sufficient experience in horseback riding to understand and appreciate the usual and inherent risks of such activity and she assumed the risk of injury from this large, strong and unpredictable animal. Her injuries were caused by an accident inherent to the activity of horseback riding. Nothing in this record supports a finding that plaintiff's injuries were caused by any defect or unreasonable behavior of her horse or that defendants' behavior created an unanticipated risk or increased the known risks (see *Stanislav*, 2010 WL 4721332; *Kirkland v Hall*, 38 AD3d at 498; *Tilson v Russo*, 30 AD3d at 859).

Lastly, the court finds that the release executed by plaintiff is enforceable to the extent that it insulates defendants from liability for injuries caused by an incident inherent in the activity of horseback riding rather than by reason of defendants' negligence (see *Glenn v Annunziata*, 72 AD3d

886, 888 [2d Dept 2010]; *Trummer v Niewisch*, 17 AD3d 349, *lv denied* 5 NY3d 712 [2005]; *Conteh v Majestic Farms*, 292 AD2d 485, 486 [2d Dept 2002]).

If the court were not dismissing the complaint in its entirety, it would dismiss as against defendant Karen Juckus Hossan individually. Plaintiff has not offered sufficient proof that Ms. Hossan abused her privilege of doing business in the corporate form to perpetrate a fraud or other tort or used her position for personal rather than corporate gain so as to warrant disregarding the corporate form and holding her personally liable for plaintiff's injuries (*see, Matter of Morris*, 82 NY2d 135, 141 [1993]; *Diaz v Siegel*, 23 AD3d 251, 252 [1st Dept 2005]).

Conclusion

Based upon the foregoing discussion, it is hereby

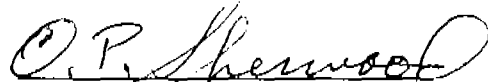
ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed in its entirety with costs and disbursements to defendants as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This shall constitute the decision and order of the court.

DATED: December 9, 2010

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O. PETER SHERWOOD
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