

**Morales v Santana**

2011 NY Slip Op 33979(U)

September 12, 2011

Supreme Court, Bronx County

Docket Number: 350164/2010

Judge: Alison Y. Tuitt

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This opinion is uncorrected and not selected for official publication.

[\* 1]

9-20-11

PART 05

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX:

Case Disposed   
Settle Order   
Schedule Appearance

MORALES, VERONICA

Index No. 0350164/2010

-against-

Hon. ALISON Y. TUITT

ZAPATA, TATIANA

Justice.

The following papers numbered 1 to 3 Read on this motion, **DISMISSAL**

Noticed on **March 23 2011** and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of 5/16/11

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1, 2	
Answering Affidavit and Exhibits	3	
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is decided in accordance with the annexed memorandum decision dated 9/12/11.

Motion is Respectfully Referred to:

Justice:  
Dated:

Dated: 9/12/11

Hon. ALISON Y. TUITT  
ALISON Y. TUITT, J.S.C.

NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

VERONICA MORALES,

INDEX NUMBER: 350164/2010

Plaintiff,

-against-

Present:

HON. ALISON Y. TUITT

*Justice*

TATIANA SANTANA, MARIO ZAPATA, JOSE MORALES, ABBOTT HOUSE, THE CITY OF NEW YORK and NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES,

Defendants.

The following papers numbered 1-4,

Read on this Defendants' Motion and Cross-Motion to Strike Punitive Damages

On Calendar of 5/16/11

Notice of Motion/Cross-Motion-Exhibits and Affirmations 1, 2

Affirmation in Opposition 3

Reply Affirmation 4

Upon the foregoing papers, defendant Tatiana Santana's (hereinafter "Santana") motion and defendant Abbott House cross-motion to strike the plaintiffs' punitive damages claim are consolidated for purposes of this decision. For the reasons set forth herein, the motion and cross-motion are denied, without prejudice, with leave to renew upon completion of discovery.

The within action arises out of a motor vehicle accident on December 31, 2008 in which the infant plaintiff alleges to have sustained serious injuries. The accident occurred on 99<sup>th</sup> Avenue near 211<sup>th</sup> Street in Queens, New York. At the time of the accident, Santana was operating her personal vehicle and transporting four minor foster children, including the 12 year old infant plaintiff. Plaintiffs allege that it was snowing

heavily at the time of the accident and the infant plaintiff was not wearing a seatbelt.

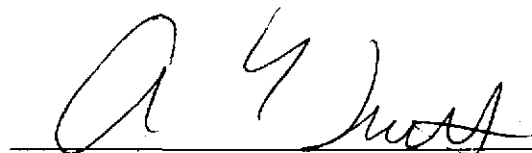
Plaintiff's complaint and bill of particulars allege reckless conduct and gross negligence regarding the defendants' operation of their motor vehicles at the time of the accident. Specifically, plaintiffs alleged that defendant Santana operated her motor vehicle in violation of Vehicle and Traffic Law §1229-1©, with a 12 year old passenger not wearing a seatbelt.

Punitive damages are available only in a limited number of instances. To sustain a claim for punitive damages in tort, one of the following must be shown: intentional or deliberate wrongdoing, aggravating or outrageous circumstances, a fraudulent or evil motive, or a conscious act that willfully and wantonly disregards the rights of another. Prozeralik v. Capital Cities Communications, Inc., 82 N.Y.2d 466 (1993); Gamiel v. Curtis & Riess-Curtis, P.C., 791 N.Y.S.2d 78 (1<sup>st</sup> Dept. 2005).

At this juncture, the within motion and cross-motion premature as discovery, specifically depositions, have not been held. Accordingly, the motion and cross-motion are denied, without prejudice, with leave to renew upon completion of discovery, or at the very least, the conclusion of all party depositions.

This constitutes the decision and order of this Court.

Dated: September 12, 2011



Hon. Alison Y. Tuitt