

Maitre v Zaodo
2018 NY Slip Op 30920(U)
May 11, 2018
Supreme Court, New York County
Docket Number: 151418/2015
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Adam Silvera **Part 22**

MARIE MAITRE,

Plaintiff,

-against-

ALI TRAIMOOR ZAODO, also known as
ALI TRAIMOOR ZAIDI, FARWA ZAIDI
And JEAN PIERRE.,

Defendants,

DECISION/ORDER

INDEX NO. 151418/2015
MOTION SEQ NO 001 & 002

ADAM SILVERA, J. :

This order/decision addresses two motion sequences, Motion Sequence 001 and Motion Sequence 002. Upon the foregoing papers, it is ordered that defendant Jean Pierre's Motion Sequence 001 for summary judgment in his favor pursuant to CPLR 3212, is denied for the reasons set forth below. Further, defendant Ali Traimoor Zaidi and defendant Farwa Zaidi's ("Co-defendants") Motion Sequence 002 for summary judgment in favor of Co-defendants and to dismiss plaintiff's complaint for failure to show the existence of a serious injury as defined under Insurance Law 5102(d) and 5104, is denied and plaintiff's cross-motion on the issue of liability is denied for the reasons set forth below.

BACKGROUND

Plaintiff filed suit on February 6, 2015, alleging that on September 27, 2014, she was a passenger travelling in a vehicle operated by defendant Jean Pierre at or near 117th Street between Lexington and Third Avenue in the County, City, and State of New York, when a motor vehicle operated by defendant Farwa Zaidi and owned by defendant Ali Traaimoor Zaidi was

attempting to parallel park and lurched forward out of a parking spot into the roadway and struck the passenger side of Pierre's vehicle injuring plaintiff.

All defendants timely answered the complaint and denied plaintiff's allegations. Co-defendants filed a cross-claim against defendant Pierre for contribution and/or indemnity for the amount necessary to satisfy in full any judgment rendered in favor of the plaintiffs against Co-defendants.

DISCUSSION

Defendant Pierre's Motion Sequence 001, for summary judgment, which alleges that Co-defendants were the sole cause of the accident which resulted in permanent serious injuries to plaintiff, is denied.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Here, defendant Pierre provides his sworn testimony indicating that Co-defendants vehicle pulled out of a parked position and into his lane of moving traffic (Pierre Mot., Exh C). In her sworn testimony, defendant Farwa Zaidi, testified that she never fully entered the parking spot and had the front end of her vehicle sticking out into the roadway when defendant Pierre's vehicle hit hers while she attempted to pull into the parking spot (Pierre Mot., Exh D at 29). The depositions submitted by defendant Pierre and Co-defendants are conflicting. It is well settled

that “[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility.” *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep’t 1990). As issues of credibility cannot be determined by the court on a motion for summary judgment, issues of fact exist precluding summary judgment. *See S.J. Capelin Assoc., Inc. v Globe Manufacturing Corp.*, 34 NY2d 338 (1974). Thus, defendant Pierre’s motion is denied.

Further, as to plaintiff’s cross-motion for summary judgment on the issue of liability against all defendants: for the reasons set forth above, liability, based on the papers submitted by defendant Pierre and Co-defendants, cannot be determined at this juncture. Thus, plaintiff’s cross-motion regarding liability is also denied.

Lastly, Co-defendants motion for summary judgment to dismiss plaintiff’s complaint for failure to show the existence of a serious injury as defined under Insurance Law 5102(d) and 5104 is denied. There are conflicting affidavits and medical reports as to severity of plaintiff’s injuries, timeframe of injuries, and range of motion (Plaintiff’s Aff in Op, Exh D-F; Defendants’ Aff in Reply, at 2-5). Thus, several issues of fact exist and Co-defendants are precluded from summary judgment.

Accordingly, it is

ORDERED that defendant Jean Pierre’s motion for summary judgment is denied; and it is further

ORDERED that plaintiff Marie Maitre’s cross-motion for summary judgment against all defendants is denied: and it is further

ORDERED that defendant Ali Traimoor Zaidi and defendant Farwa Zaidi’s motion for

summary judgment is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all defendants with notice of entry.

This constitutes the Decision/Order of the Court.

Dated:

5/11/18

ENTER:

A handwritten signature in black ink, appearing to read 'Adam Silvera', written over a horizontal line.

Hon. Adam Silvera, J.S.C.