

<b>Bonilla v V. Groppa Pools, Inc.</b>
2018 NY Slip Op 30976(U)
April 6, 2018
Supreme Court, Bronx County
Docket Number: 23249/2015E
Judge: Lizbeth Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX - PART 10

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ENIYA BONILLA AND JAMES G. BRYANT,

Index No. 23249/2015E

Plaintiffs,

- against -

DECISION AND ORDER

V. GROPPA POOLS, INC., ROSARIO  
SANTIAGO, WILFREDO SANTIAGO<sup>1</sup>,  
LARRY SAEZ<sup>2</sup>, ROFEL P. MORENO AND  
ROBERTO A. TAVERAS<sup>3</sup>,

Defendants.

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HON. LIZBETH GONZALEZ

The following papers were read on this motion for summary judgment by defendant Rofel P. Moreno (hereinafter "Moreno") for an order pursuant to CPLR 3212 dismissing plaintiffs' complaint on the issue of liability:

- Notice of motion for summary judgment returnable November 21, 2016; Affirmation of counsel for defendant Moreno on the issue of non-involvement, affidavit of defendant Rofel P. Moreno, Exhibits;
- Affirmation of plaintiffs' counsel in opposition, Exhibits.

The instant action arises out of a multi-vehicle accident that occurred on October 14, 2014 in the westbound traffic lane on Yonkers Avenue in Westchester County that caused damage to three vehicles on the eastbound side of the road.

<sup>1</sup>Stipulation of discontinuance with prejudice between plaintiff and attorney for defendant Wilfredo Santiago was filed via NYSCEF on October 20, 2016.

<sup>2</sup>Stipulation of discontinuance with prejudice between plaintiff and attorney for defendant Larry Saez was filed via NYSCEF on October 20, 2016.

<sup>3</sup>Stipulation of discontinuance with prejudice between plaintiff and attorneys for defendant Roberto A. Taveras was filed via NYSECF on October 14, 2016.

Defendant Moreno moves for summary judgment on the issue of liability pursuant to CPLR 3212 and for an order dismissing plaintiffs' complaint. He submits the pleadings, note of issue, his affidavit, deposition transcripts of the plaintiffs' and the uncertified police report.

In opposition, plaintiffs submit the preliminary and compliance conference orders.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*Alvarez v Prospect Hospital*, 68 N2d, 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 N2d 851 [1985]). The court's function on these motions for summary judgment is issue finding rather than issue determination (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1987]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 40 N2d 223 [1978]). Movants must come forward with evidentiary proof in admissible form sufficient to direct judgment in their favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). When the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8 [1980]; *Sillman*, 3 NY2d 395). When deciding a summary judgment motion, the role of the Court is to make determinations as to the existence of bona fide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restant Constr. Corp.*, 18 NY3d 499 [2012]).

The vehicle operated by defendant Rosario Santiago and owned by V. Groppa Pools, Inc., ("Groppa") crossed over the yellow lines separating the westbound and eastbound lanes of traffic and entered into the eastbound lane on Yonkers Avenue striking defendant Moreno's vehicle and three others. Defendant Moreno asserts in his affidavit dated 8/5/16 that defendant-driver Santiago acknowledged that it was his vehicle that was responsible for crossing the yellow line and striking

the Moreno vehicle. Defendant Moreno additionally asserts that defendant Groppa admitted liability for the accident and paid defendant Moreno for the property damage he incurred as a result of Groppa's negligence.

The police report reflects that on October 14, 2014, defendant Rosario Santiago (hereinafter "Santiago") was operating a motor vehicle owned by defendant Groppa driving in a westerly direction on Yonkers Avenue when his foot slipped off the brake pedal, causing him to lose control of the vehicle. Defendant Santiago stated to the police that he struck the vehicle owned and operated by plaintiff Eniya Bonilla and then struck the vehicle owned and operated by defendant Roberto A. Taveras while they were both stopped in westbound traffic. Defendant Santiago averred that the Groppa vehicle then "bounced off of" the vehicle owned and operated by defendant Roberto A. Taveras "causing his vehicle to go into the eastbound lane" and sideswipe the vehicle owned and operated by defendant Larry Saez which was stopped in traffic heading eastbound. Defendant Santiago stated to police that the Groppa vehicle then "flipped over on its roof" and then came to a stop in the intersection of Bronx River Road and Yonkers Avenue. The police report reveals that plaintiff Eniya Bonilla, defendant Roberto A. Taveras, defendant Larry Saez, and defendant Moreno "all related that the accident occurred like Driver 1 [defendant Santiago] said, but all drivers concurred that "Driver 1 [defendant Santiago] was driving at a high rate of speed and that's why he lost control of his vehicle." Uncertified accident reports, even those which contain statements attributable to parties are generally inadmissible hearsay and lack probative value (*Rivera v GT Acquisition 1 Corp.*, 7 AD3d 525, 526, 899 NYS2d 46 [1<sup>st</sup> Dept. 2010]; *Coleman v Maclas*, 61 AD3d 569, 877 NYS2d [1<sup>st</sup> Dept 2009]).

In this instance, defendant Moreno has proffered admissible proof by way of his affidavit, and plaintiffs' testimony eliminating any material issue of fact and establishing that he was not a

contributing factor to the cause of the subject accident.

Plaintiffs counter that discovery is not complete as defendant Moreno has failed to appear for his examination before trial. Mere conclusions, expressions of hope or unsubstantiated allegations or assertions sufficient to defeat a motion for summary judgment that may be uncovered during the discovery process is insufficient to raise a triable issue of fact (*Alvord v Swift & Muller Constr. Corp.*, 46 N2d 276 [1978]; *Tavarez v Herrasme*, 140 AD3d 453 [1<sup>st</sup> Dept 2016]; *Somereve v Plaza Constr. Corp.*, 136 AD3d 537 [1<sup>st</sup> Dept 2016]; *DeHoyos v City of New York*, 121 AD3d 632 [1<sup>st</sup> Dept 2014]; *Eichman v Baker*, 121 AD3d 448 [1<sup>st</sup> Dept 2014]; *Butler v Petrova*, 116 AD3d 580 [1<sup>st</sup> Dept 2014]).

Defendant Moreno has met his burden and plaintiffs' have not met their shifting burden. Defendant Moreno was at a complete stop in traffic in the eastbound lane on Yonkers Avenue and his actions did not, in any way, contribute to the happening of this accident (*Rodriguez v Garcia*, 154 AD3d 581 [1<sup>st</sup> Dept 2017]; *Santos v Booth*, 126 AD3d 506 [1<sup>st</sup> Dept 2015]; *Jeffrey v DeJesus*, 116 AD3d 574 [1<sup>st</sup> Dept 2014]).

Accordingly, it is

ORDERED that, the motion of defendant Rofel P. Moreno seeking summary judgment pursuant to CPLR 3212 on the issue of liability is granted; and it is further

ORDERED that, defendant Rofel P. Moreno shall serve plaintiffs with a copy of the order herein with notice of entry.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

Dated: April 6, 2018

ENTER,

  
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Hon. Lizbeth González, J.S.C.