

Hunter v Mengyuan Li
2018 NY Slip Op 32522(U)
October 3, 2018
Supreme Court, New York County
Docket Number: 161446/2015
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. ADAM SILVERA</u>	PART	IAS MOTION 22
	<i>Justice</i>		
-----X		INDEX NO.	<u>161446/2015</u>
TAQUAN HUNTER,			08/01/2018,
	Plaintiff,	MOTION DATE	<u>08/01/2018,</u>
	- v -		08/01/2018
MENGYUAN LI, THATIUS MCDONALD, MONIQUE MCDONALD		MOTION SEQ. NO.	<u>004 005 006</u>
	Defendant.		

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 76, 77, 78, 79 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that defendants Monique McDonald and Thatius McDonald's (hereinafter referred to as the McDonald Defendants) motion for summary judgment of dismissal and plaintiff's cross-motion for summary judgment on the issue of liability (mot. seq. no. 004), defendant MengYuan Li's threshold motion (mot. seq. no. 005), and the McDonald Defendants' threshold motion (mot. seq. no. 006) is decided below.

The McDonald Defendants' motion for summary judgment to dismiss the complaint, pursuant to CPLR 3212, is denied. Summary judgment is a drastic remedy, only to be granted if the moving party sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). "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). "In 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 such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Here, the McDonald Defendants argue that they did not breach any duty to plaintiff and are not liable for his injuries. In support of their motion, the McDonald Defendants proffer, *inter alia*, the deposition transcripts of plaintiff, defendant Thatius McDonald, and defendant Li. Here, it is undisputed that plaintiff was a passenger in the vehicle operated by defendant Thatius McDonald and owned by defendant Monique McDonald when such vehicle was involved in an accident with the vehicle owned and operated by defendant Li. At the time of the accident, the McDonald Defendants’ vehicle was traveling straight in one lane of traffic and defendant Li’s vehicle was switching lanes. According to the McDonald Defendants, defendant Li made an unsafe lane change without yielding to oncoming traffic and is solely liable for causing the accident and plaintiff’s injuries.

In opposition, defendant Li argues that issues of fact exist as to whether the McDonald Defendants caused or contributed to causing the accident, and whether defendant Thatius McDonald had the opportunity to take evasive action prior to the accident. The Court notes that a review of the deposition transcripts reveals that defendant Thatius McDonald and defendant Li’s testimony conflict as to how the accident occurred. Specifically, the McDonald Defendants argue that their vehicle was traveling straight in one lane of traffic when defendant Li unexpectedly attempted to change lanes into defendant Thatius McDonald’s lane of traffic, without signaling, and side swiped their vehicle. Defendant Thatius McDonald testified that he saw defendant Li’s vehicle approximately 30 seconds before the accident, that she was in the left lane of traffic, and

she did not have her turn signal on. According to defendant Li's deposition transcript, she turned on her turn signal which was on for approximately one minute prior to the accident, looked for vehicles prior to switching lanes, and upon seeing no cars proceeded to switch lanes moving approximately four or five miles an hour when she felt her vehicle get scratched. Thus, an issue of fact, regarding how the accident occurred exists, precluding summary judgment and the McDonald Defendants' motion for summary judgment dismissing the complaint against them is denied.

As to plaintiff's cross-motion for summary judgment on the issue of liability, plaintiff has established that he was a passenger in the vehicle operated by Thatius McDonald. A plaintiff who establishes that he was an innocent passenger is entitled to summary judgment on the issue of liability. *See Mello v Narco Cab Corp.*, 105 AD3d 634, 635 (1st Dep't 2013). Here, defendants do not oppose plaintiff's cross-motion, and thus, fail to raise any triable issues of fact sufficient to preclude summary judgment or even allege that plaintiff somehow caused the accident. As such, plaintiff's motion for summary judgment is granted as to all defendants' liability. The issue of plaintiff's own comparative negligence, if any, is an issue regarding damages to be determined by the jury at trial. *See Rodriguez v City of New York*, 31 NY3d 312, 320 (2018).

With regards to plaintiff's injuries, defendant Li moves for summary judgment arguing that plaintiff failed to show that he sustained a serious injury pursuant to Insurance Law §5102(d). The McDonald Defendants similarly move for summary judgment on the same basis. All defendants argue that, based upon the deposition testimony of the parties, Bill of Particulars, and independent medical examinations by defendants' doctors, plaintiff did not suffer from a permanent consequential limitation of use of a body organ or member, or a significant limitation

of use of a body function or system, and that there is no causal relationship between plaintiff's complaints and the instant motor vehicle accident.

As stated above, "[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 such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

In opposition, plaintiff proffers, *inter alia*, his physicians' affidavits which show restrictions in plaintiff's ranges of motion. Such affidavits further state that plaintiff's injuries were caused by the subject motor vehicle accident. As there are conflicting medical reports and affidavits there exists an issue of fact precluding summary judgment. Thus, defendant Li and the McDonald Defendants' motions for summary judgment are both denied.

Accordingly, it is

ORDERED that defendants Monique McDonald and Thatius McDonald's motion for summary judgment of dismissal (mot. seq. no. 004) is denied in its entirety; and it is further

ORDERED that plaintiff's cross-motion for summary judgment on the issue of liability is granted as against defendants MengYuan Li, Thatius McDonald, and Monique McDonald; and it is further

ORDERED that defendant MengYuan Li's motion for summary judgment (mot. seq. no. 005) on the issue of threshold is denied in its entirety; and it is further

ORDERED that defendants Thatius McDonald and Monique McDonald's motion for summary judgment (mot. seq. no. 006) on the issue of threshold is denied in its entirety; and it is further

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

This constitutes the Decision/Order of the Court.

10/3/2018
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: