

Harrison v Chen

2018 NY Slip Op 34346(U)

December 10, 2018

Supreme Court, Suffolk County

Docket Number: Index No. 883/2017

Judge: Joseph Farneti

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SHORT FORM ORDER

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY**

ORIGINAL

PRESENT:

**HON. JOSEPH FARNETI
Acting Justice Supreme Court**

DERINE HARRISON,

Plaintiff,

-against-

**CLIFFORD CHEN, YUAN YUAN CHEN,
CHAD DAYTON, CARLOS TINOCO,
GUARDIAN BUS COMPANY, INC., LISA
BEHAR and WILLIAM DODD, JR.,**

Defendants.

**ORIG. RETURN DATE: DECEMBER 19, 2017
FINAL SUBMISSION DATE: FEBRUARY 22, 2018
MTN. SEQ. #: 001
MOTION: MG**

**ORIG. RETURN DATE: MAY 3, 2018
FINAL SUBMISSION DATE: MAY 3, 2018
MTN. SEQ. #: 002
MOTION: MG**

**PLAINTIFF'S ATTORNEY:
ZIMMERMAN LAW, P.C.
315 WALT WHITMAN ROAD - SUITE 215
HUNTINGTON STATION, NEW YORK 11746
631-415-0900**

**ATTORNEY FOR DEFENDANTS CHEN:
RUSSO & TAMBASCO
115 BROAD HOLLOW ROAD - SUITE 300
MELVILLE, NEW YORK 11747
631-760-0920**

**ATTORNEY FOR DEFENDANT
CHAD DAYTON:
PICCIANO & CAHILL, P.C.
1065 STEWART AVENUE - SUITE 210
BETHPAGE, NEW YORK 11714
516-294-5200**

**ATTORNEY FOR DEFENDANTS
CARLOS TINOCO AND
GUARDIAN BUS COMPANY, INC.:
DODGE & MONROY, P.C.
1983 MARCUS AVENUE - SUITE 208
LAKE SUCCESS, NEW YORK 11042
516-216-1400**

**ATTORNEY FOR DEFENDANT
LISA BEHAR:
LAW OFFICES OF KAREN L. LAWRENCE
878 VETERANS MEMORIAL HWY. - SUITE 100
HAUPPAUGE, NEW YORK 11788
631-439-4200**

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ATTORNEY FOR DEFENDANT

WILLIAM DODD, JR.:

BELLO & LARKIN
150 MOTOR PARKWAY - SUITE 405
HAUPPAUGE, NEW YORK 11788
631-300-4960

Upon the following papers numbered 1 to 16 read on these motions _____
FOR SUMMARY JUDGMENT

Notice of Motion and supporting papers 1-3; Affirmation in Opposition 4; Affirmation in Opposition 5; Affirmation in Opposition and supporting papers 6, 7; Reply Affirmation and supporting papers 8, 9; Notice of Motion and supporting papers 10-12; Affirmation in Opposition 13; Affirmation in Opposition 14; Affirmation in Opposition and supporting papers 15, 16; it is,

ORDERED that this motion (seq. #001) by defendants CARLOS TINOCO and GUARDIAN BUS COMPANY, INC. (the "Guardian defendants") for an Order, pursuant to CPLR 3212, granting summary judgment to the Guardian defendants dismissing the summons and complaint and all cross-claims asserted against the Guardian defendants, is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received opposition to this application from plaintiff DERINE HARRISON ("plaintiff"), defendants YUAN YUAN CHEN and CLIFFORD CHEN (the "Chen defendants"), and defendant CHAD DAYTON ("Dayton"); and it is further

ORDERED that this motion (seq. #002) by defendant LISA BEHAR ("Behar") for an Order, pursuant to CPLR 3212, granting summary judgment to Behar dismissing the summons and complaint and all cross-claims asserted against Behar, is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received opposition to this application from plaintiff, the Chen defendants, and Dayton.

This is an action for personal injuries allegedly sustained by plaintiff as a result of a six-vehicle motor vehicle accident that occurred on November 6, 2014, at the intersection of Route 106 and Brookville Road, in the Village of Brookville, State of New York. On this date and location, it is alleged that the Chen defendants' vehicle attempted to make a left turn from Route 106 onto Brookville Road, and collided with the Dayton vehicle. Thereafter, the Chen defendants' vehicle allegedly struck the Guardian defendants' vehicle, Behar's vehicle, defendant WILLIAM DODD, JR.'s vehicle, and finally plaintiff's vehicle, all of which were stopped for a red traffic signal on Brookville Road.

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This action was commenced by the filing of a summons and verified complaint on or about August 2, 2016. Issue has been joined.

The Guardian defendants and Behar now move for summary judgment on the issue of liability, each alleging that their vehicles were struck by the Chen defendants' vehicle while they were completely stopped for a red traffic light, after the Chen defendants' vehicle collided with the Dayton vehicle. As such, the movants argue that there are no questions of fact concerning the issue of liability, as they bear no responsibility for the happening of the accident. Notably, the Guardian defendants and Behar both contend that their vehicles never came into contact with plaintiff's vehicle, or any other vehicle save the Chen defendants' vehicle.

On a motion for summary judgment the Court's function is to determine whether issues of fact exist not to resolve issues of fact or to determine matters of credibility (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910 [2007]; *Kolivas v Kirchoff*, 14 AD3d 493 [2005]). Therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (see *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 [2004]; *Roth v Barreto*, 289 AD2d 557 [2001]; *Mosheyev v Pilevsky*, 283 AD2d 469 [2001]). The failure of the moving party to make such a *prima facie* showing requires denial of the motion regardless of the insufficiency of the opposing papers (see *Dykeman v Heht*, 52 AD3d 767 [2008]; *Sheppard-Mobley v King*, 10 AD3d 70 [2004]; *Celardo v Bell*, 222 AD2d 547 [1995]). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v New York*, 49 NYS2d 557 [1980]). However, mere allegations, unsubstantiated conclusions, expressions of hope or assertions are insufficient to defeat a motion for summary judgment (see *Zuckerman v City of New York*, *supra*; *Blake v Guardino*, 35 AD2d 1022 [1970]).

Based upon the adduced evidence, the Court finds that both the Guardian defendants and Behar have established *prima facie* that they are entitled to judgment as a matter of law dismissing the complaint and all cross-claims asserted against them (see *Winegrad v New York Univ. Med. Ctr.*, *supra*; *Vaden v Rose*, 4 AD3d 468 [2004]; *McNulty v DePetro*, 298 AD2d 566 [2002]). Plaintiff and the Chen defendants have merely submitted an affirmation of their attorney in response to the motions. Counsel's affirmations, made without personal knowledge of the facts, are without any evidentiary value and are

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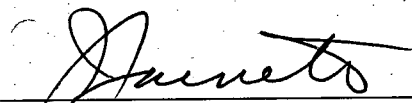
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insufficient to defeat a motion for summary judgment (see *S. J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338 [1974]; *Moran v Man-Dell Food Stores, Inc.*, 293 AD2d 723 [2002]; *Hoffman v Eastern Long Island Transp. Enter.*, 266 AD2d 509 [1999]; *Cataldo v Waldbaum, Inc.*, 244 AD2d 446 [1997]). Further, the affidavits of Dayton submitted in opposition to the motions do not raise a question of fact as to whether the Guardian defendants or Behar caused the subject accident. Moreover, the argument that the motions should be denied as premature is rejected absent any showing that discovery might lead to relevant evidence or that facts essential to opposing the instant motions are exclusively within the movants' knowledge and control (see *Le Grand v Silberstein*, 123 AD3d 773 [2014]; *Raimondo v Plunkitt*, 102 AD3d 851 [2013]; *Buchinger v Jazz Leasing Corp.*, 95 AD3d 1053 [2012]). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion" (*Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760 [2006]; *Ordonez v Levy*, 19 AD3d 385 [2005]).

In view of the foregoing, these motions by the Guardian defendants and Behar for summary judgment dismissing the complaint and all cross-claims asserted against them are **GRANTED**, and the complaint and all cross-claims asserted against the Guardian defendants and Behar are hereby dismissed.

The foregoing constitutes the decision and Order of the Court.

Dated: December 10, 2018



HON. JOSEPH FARNETI
Acting Justice Supreme Court

____ FINAL DISPOSITION

X NON-FINAL DISPOSITION