

Rodriguez v Sanchez
2018 NY Slip Op 34371(U)
November 19, 2018
Supreme Court, Westchester County
Docket Number: Index No. 50967/17
Judge: Linda S. Jamieson
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 To commence the statutory time period for appeals as of right (NY CPLR § 57.13), this order is being filed with a copy of this order, with notice of entry, upon all parties.

Disp ____ Dec __x__ Seq. No. __2__ Type __SJ__

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X
 HUGO RODRIGUEZ,

Plaintiff,

-against-

Index No. 50967/17

DECISION AND ORDER

ROMAN SANCHEZ and ROBIN SANCHEZ,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits ¹	1
Affirmation and Exhibits in Opposition	2
Affirmation in Opposition	3

Defendant Roman Sanchez, the father of co-defendant Robin Sanchez, brings his motion seeking summary judgment dismissing him from the action. The undisputed facts are simple. Robin Sanchez was driving his father's van when he hit plaintiff's car. (Robin claims that plaintiff's car rolled into his, a claim which plaintiff dismisses as patently false.) Robin fled from the scene, only returning when his father was able to reach him, after the police contacted Roman Sanchez.

¹Exhibits must be tabbed. Counsel is directed to review the Part Rules.

The basis for Roman's motion is that he claims that his son was driving the vehicle without his permission, such that he should not be liable for the accident pursuant to Vehicle and Traffic Law § 388. Roman testified at his deposition that Robin was never authorized to drive his vehicles. Robin corroborated this at his deposition, although he did also state that his plan was to move the vehicle to their shared driveway. (The parties live in separate units in the same house, allegedly.) Roman testified that the keys were in his apartment prior to the accident. In contrast, Robin testified that the keys were at Roman's workplace, adjacent to his workplace (the two businesses were separate, but owned by a grandfather and grandson). Plaintiff points out that Roman did not file charges against Robin for taking the car without permission.

It has long been settled that "Vehicle and Traffic Law § 388(1) provides that the owner of a motor vehicle is liable for the negligence of one who uses or operates the vehicle with his or her permission. This section gives rise to a presumption that the vehicle is being operated with the owner's consent. This strong presumption continues until there is substantial evidence to the contrary." *Walls v. Zuvic*, 113 A.D.2d 936, 936, 493 N.Y.S.2d 628, 629 (2d Dept. 1985).

Here, although both defendants testified that Robin had no permission, there is also evidence that indicates that Robin

might have occasionally driven the vehicle (albeit briefly). Moreover, the parties contradicted each other about where the keys to the van were at the time that Robin took them. As the Second Department held recently,

The uncontradicted testimony of a vehicle owner that the vehicle was operated without his or her permission, does not, by itself, overcome the presumption of permissive use. Additionally, if the evidence produced to show that no permission has been given has been contradicted or, because of improbability, interest of the witnesses or other weakness, may reasonably be disregarded by the jury, its weight lies with the jury. Although the rule is not absolute or invariable, in most cases uncontradicted disavowals of permission by both the owner of the vehicle and the driver will constitute substantial evidence negating permissive use and entitle the owner to summary judgment. However, disavowals by both the owner and the driver, without more, should not automatically result in summary judgment for the owner. Ultimately, whether summary judgment is warranted depends on the strength and plausibility of the disavowals of permission, and whether they leave room for doubts that are best left for the jury.

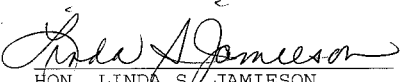
State Farm Fire & Cas. Co. v. Sajewski, 150 A.D.3d 1297, 1298, 56 N.Y.S.3d 204, 206-07 (2d Dept. 2017). As the Second Department held, the "strength and plausibility of the disavowals of permission" in this case certainly leave "room for doubts that are best left for the jury." Accordingly, the motion is denied.

The parties are directed to appear for a Settlement

December 18, 2018 at 9:15 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
November 19, 2018


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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