

Centeno v Adam

2018 NY Slip Op 34533(U)

December 31, 2018

Supreme Court, Bronx County

Docket Number: Index No. 31905/2017E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 14

-----X
CENTENO, WANDA, et ano.

Index No. 31905/2017E

- against -

Hon. JOHN R. HIGGITT,

ADAM, SULIMAN YACOUB, et ano.
-----X

A.J.S.C.

The following papers numbered 6 to 15 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)** noticed on October 11, 2018 and duly submitted as No. 31 on the Motion Calendar of October 11, 2018

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-12
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	13-14
Replying Affidavit and Exhibits	15
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: 12/31/2018

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
WANDA CENTENO and VIDAL CENTENO,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 31905/2017E

ULIMAN YACOUB ADAM and GREENLIMO
SERVICE INC.,

Defendants.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff Wanda Centeno¹ sustained in a motor vehicle accident that took place on August 18, 2017. Plaintiff Wanda Centeno was entering the vehicle operated by defendant Adam and owned by defendant Greenlimo Services Inc. when defendant Adam started to drive before plaintiff was inside the vehicle, causing plaintiff's injuries. Plaintiffs seeks partial summary judgment on the issue of defendants' liability. For the reasons that follow, plaintiffs' motion is granted.

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 (*see Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). CPLR 3212(b) requires the court to determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit" (*Id.*). Summary judgment should be granted only where there are no issues

¹ Plaintiff Vidal Centeno asserted a derivative claim.

of material fact, dictating that the court direct judgment in favor of the movant as a matter of law (*see Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). Once the movant makes a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact warranting denial of the motion (*see Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*).

Plaintiffs satisfied their prima facie burden, establishing their entitlement to judgment as a matter of law on the issue of defendants' liability (*see CPLR 3212[b]*). Plaintiffs submitted a copy of the pleadings, a police report and the affidavit of plaintiff Wanda Centeno. In her affidavit, plaintiff Wanda averred that as she was entering defendants' vehicle defendant Adam began driving without realizing that she was not completely inside the vehicle.

In opposition, defendants fail to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants argue that plaintiffs' motion should be denied as premature because no discovery has been conducted. However, the mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda, supra*; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]).

Defendant also challenge the admissibility of the police report submitted by plaintiffs. While the police report is not in admissible form (*see Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]), defendant Adam's statement that he started driving without realizing that plaintiff Wanda Centeno was not completely inside the vehicle is admissible as a party admission (*see Niyazov v Bradford*, 13 AD3d 501 [2nd Dept 2004]). In any event, plaintiff Wanda Centeno's unrefuted

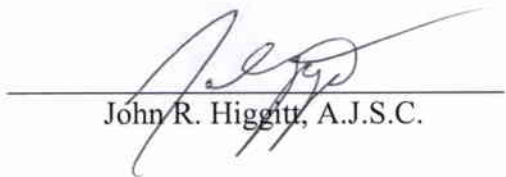
affidavit was sufficient to meet her prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Accordingly, it is

ORDERED, that plaintiffs' motion for partial summary judgment on the issue of defendants' liability for causing the subject accident is granted.

This constitutes the decision and order of the court.

Dated: December 31, 2018



John R. Higgit, A.J.S.C.