

Motor Veh. Acc. Indemn. Corp. v Melo
2019 NY Slip Op 30963(U)
April 4, 2019
Supreme Court, New York County
Docket Number: 451156/2012
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 451156/2012

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORP.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 005

- v -

KERVINSON MELO, MARIA ABREU

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff failed to appear for oral argument and the Court, upon consent of the defendants, has decided this motion on the papers. Plaintiff's motion for summary judgment is granted.

Background

This case involves a car accident in which defendants, the owner and driver of the car, failed to carry car insurance. Defendant Melo was the owner of the car and defendant Abreu was operating it on April 9, 2009, when Abreu allegedly hit a pedestrian as she was in the crosswalk on West 185th Street and Wadsworth Avenue in Manhattan.

Plaintiff is a statutorily created not-for profit corporation which steps in to process claims and compensate victims of certain car accidents, including situations in which the driver or owner of the offending vehicle was uninsured.

On October 27, 2009 plaintiff entered into a settlement with the victim of the car accident in which plaintiff paid the victim a total of \$25,000 as compensation for her injuries (NYSCEF

Doc. No. 49). Plaintiff and the pedestrian entered into a signed release and assignment of any claims the pedestrian might have against defendants to plaintiff (*id.*).

Plaintiff obtained a judgment by default which was vacated on consent and defendants were allowed to answer (NYSCEF Doc. No. 38). As the answers do not assert an affirmative defense as to jurisdiction, that challenge was waived.

Plaintiff now brings this motion seeking summary judgment against defendants for \$28,300 plus interest. This amount consists of the \$25,000 it paid to the injured pedestrian through settlement and \$3,300 it paid for no-fault medical bills on July 28, 2009. Defendants seek dismissal of the action, claiming that they did not know that their car was uninsured, that they cannot afford to pay that amount, and because they were improperly served. The service objection was already waived by not asserting it in the answers.

Defendants do not deny that the vehicle was uninsured at the time of the accident. Instead, in the opposition papers they explain that they were unaware that their insurance had lapsed and blame their broker. Defendants state that they had been making payments to the insurance broker in a timely manner but that the broker was not forwarding those payments to the insurance company.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most

favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *aff'd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Defendants admit they had no insurance. Although their broker may not have forwarded their payments, that certainly is not plaintiff's or the injured pedestrian's fault. It was up to defendants to seek recovery from their broker. The broker is not a party to this case and this Court cannot assign liability to the broker.

Had defendants had insurance, then their insurer would have handled the pedestrian's claim. Because they had no insurance, plaintiff was required to step in to compensate the injured pedestrian. The statutory scheme also allows plaintiff to sue defendants, the driver and owner of the car, for the amounts paid out on their behalf. Therefore, plaintiff met its burden on its motion for summary judgment.

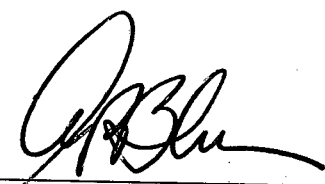
In opposition, defendants do not raise an issue of fact. They admit they had no insurance. Their excuse, that it is the broker's fault, even if true, is not legally sufficient to shield defendants from plaintiff's claims. While the Court understands that this is a lot of money and defendants claim they cannot afford it, whether they are liable is a completely different issue from whether

they can afford it. This Court can only consider whether they are liable for the debt, and they are.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment in the amount of \$28,300 plus interest from October 27, 2009 is granted and the clerk is directed to enter judgment upon presentation of the proper papers therefor.

4-4-19
DATE



ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

APPLICATION:

- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE:

- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE