

Choe v Hesman

2019 NY Slip Op 31318(U)

March 18, 2019

Supreme Court, Queens County

Docket Number: 704198/2016

Judge: Leslie J. Purificacion

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 39

-----X

Index Number 704198/2016

EUNSOOK V. CHOE and JIN HI JOUNG,

Plaintiffs,

DECISION/ORDER

--against--

Motion Sequence: 3

HOSNY MAKHLOF HESMAN and TAREK
ELGABRY,

Defendants.

-----X

The following papers numbered 1-12 read on plaintiff on the counterclaim, Eunsook V. Choe's motion to dismiss the counterclaim and any cross claims.

PAPERS
NUMBERED

| | |
|---------------------------------------|-------|
| N.M., Aff., Exhibits and Service..... | 1-4 |
| Opp. Affs., and Service..... | 5-7 |
| Reply..... | 8-10 |
| N.C.M., Aff. and Service..... | 11-12 |

Upon the foregoing papers, the motion is decided as follows:

Plaintiffs commenced this action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on February 7, 2016, on Steinway Street, near 25th Avenue, Queens, New York. Defendants served an answer with counterclaim. Plaintiff on the counterclaim, Eunsook V. Choe, now moves for summary judgment on the issue of liability. Plaintiff Eunsook V. Choe and Jin Hi JounG join plaintiff on the counterclaim's application and cross move for summary judgment.

In support of the motion movant submits, inter alia¹, her examination before trial testimony and that of co-plaintiff Jin Hi Joung.

In opposition, defendants submits, inter alia, the examination before trial testimony of Hesman Hosny Makhlof s/h/a Hosny Makhlof Hesman.

The proponent of summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 N.Y.2d 557).

Plaintiff driver, Eunsook V. Choe, states that she was on Steinway street, which has two-way traffic, divided by double yellow lines. She further testified that she saw defendants' vehicle, which was on the opposing side, cross the double yellow line and that she then felt an impact to her vehicle. She testified that she was traveling approximately twenty to thirty miles per hour. Plaintiff Jin Hi Joung testified that she was seated directly behind Choe. She further testified that she observed defendants' vehicle "reversing", then felt an impact on the driver's side of her vehicle.

Defendant Hesham Hosny Makhlof testified that he was parked at a hydrant on Steinway Street. He testified that he saw a parking spot across Steinway and intended to move his vehicle to that spot. He further testified that he intended to make a U-turn to park in the open space. He testified that Steinway Street was divided by double

¹The court does not consider the police accident report. The officer did not witness the accident and is not certified.

yellow lines. He testified that the accident occurred while he was in the process of making the U-turn and backing up his vehicle.

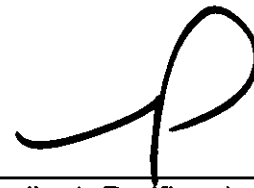
"Summary judgment will not be granted where a movant has not established a prima facie entitlement thereto" (*Stoehr v Levere*, 183 AD2d 886, citations omitted). Here, movant's submissions are insufficient to eliminate all issues regarding the facts surrounding the accident and whether either or both parties were negligent (see *Allen v. Echols*, 88 AD3d 926). Movant had little or no recollection about how the accident happened and testified that she had not seen defendants' vehicle, a large SUV, prior to the accident. Plaintiff Joung added little to the description of how the accident happened. In addition, movant testified that she was traveling 25 to 30 miles per hour prior to the accident.

The court finds that there are genuine triable issues of fact with respect to whether the operators saw what there was to be seen, and whether the accident could have been avoided.

Accordingly, the plaintiff on the counterclaims motion and plaintiffs' cross motion are denied.

This is the decision and order of the court.

Date: March 18, 2019



Hon. Leslie J. Purificacion, J.S.C.

FILED
APR 04 2019
COUNTY CLERK
QUEENS COUNTY