

Ramos v New York City Tr. Auth.
2019 NY Slip Op 31956(U)
July 9, 2019
Supreme Court, New York County
Docket Number: 154763/2015
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22-----X
BELINDA RAMOS,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, VAL AUTO, LLC, ELMIRZO
SULTONOV, RANDALL SAN MIGUEL, KIMBERLY COLEMANDefendant.
-----XINDEX NO. 154763/2015MOTION DATE 11/09/2018MOTION SEQ. NO. 002**DECISION AND ORDER**

HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

Upon the foregoing documents, it is ORDERED that plaintiff Belinda Ramos' motion for an Order pursuant to CPLR §3212 granting summary judgment in favor of plaintiff Belinda Ramos as against defendants Val Auto, LLC and Elmirzo Sultonov (collectively the "Val Auto Defendants") on the issue of liability or alternatively an Order for summary judgment on liability against all defendants on the issue of liability; striking the affirmative defenses of all defendants; and setting this matter down for an assessment of damages is denied. Further, it is ORDERED that defendants Randall San Miguel and Kimberly Coleman's cross-motion for an order dismissing plaintiff's complaint and all cross claims against said defendants is denied. Lastly, it is ORDERED that the Val Auto Defendants' cross-motion for an Order to dismiss plaintiff's Complaint on the grounds that said defendants are not liable for the accident at issue is denied.

The suit at bar stems from a motor vehicle accident which occurred on March 31, 2016, on the FDR Drive near East 52nd Street, in the County, City, and State of New York, when a

vehicle owned by defendant Val Auto and operated by defendant Sultonov (the “Val Auto Vehicle”) and transporting passenger plaintiff Ramos struck a vehicle operated by defendant Randall San Miguel and owned by defendant Kimberly Coleman (the “Coleman Vehicle”) in the rear which allegedly led to the serious injury of plaintiff.

Preliminarily, the Court will address the status of New York City Transit Authority (d/b/a MTA New York City Transit and Metropolitan Transportation Authority (“Transit Defendants”) as defendants in this matter. In a December 19, 2016 Decision/Order, the Honorable Leticia M. Ramirez granted Transit Defendants’ motion for summary judgment to dismiss plaintiff’s Complaint with prejudice as well as any and all cross-claims against Transit Defendants. Thus, this Court finds that the Transit Defendants are no longer party to this case and Orders that pursuant to this Court’s December 19, 2016 Decision/Order plaintiff’s complaint and any and all cross-claims against the Transit Defendants are dismissed.

Plaintiff’s motion for summary judgment on the issue of liability as against defendants Val Auto and Sultonov is denied. “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” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). “A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that

driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Summary Judgment in favor of the plaintiff is warranted where the defendant’s own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). “It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles” (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]).

Here, plaintiff affirms that she was a passenger in the Val Auto Vehicle when it rear-ended the Coleman Vehicle (Mot, Exh D). Plaintiff states in her affirmation that the Val Auto Defendants are “100% at fault for causing the accident” (*id.*). Plaintiff also submits her deposition in which she states that the vehicle she was a passenger of struck the Coleman Vehicle in the rear (*id.*, Exh E at 40, ¶¶ 5-13). Plaintiff has met its burden for summary judgment on the issue of liability and the burden shifts to defendants to raise an issue of fact. Defendants Randall San Miguel and Kimberly Coleman adopt the arguments of plaintiff in their cross-motion, and thus have also met their burden for summary judgment.

The Val Auto Defendants oppose the motion and cross-move for summary judgment on the grounds that said defendants are not liable for the accident at issue. The Val Auto Defendants aver that defendant driver Sultonov was faced with an emergency situation when the Coleman Vehicle quickly changed lanes and braked suddenly in front of the Val Auto Vehicle. In support of assertion the Val Auto Vehicle was not liable due to an emergency situation, the Val Auto Defendants attach the affidavit of defendant Sultonov (Cross-Mot, Exh A).

In his affidavit, Sultonov avers that the Coleman Vehicle “braked suddenly while merging” and that Sultonov “applied the brakes . . . however, [he] could not avoid contact with the [Coleman Vehicle]” (*id.*). Defendant Sultonov’s affidavit contradicts the statements of plaintiff in both her affidavit and deposition. Thus, a material issue of fact exists as to the occurrence of the accident. Accordingly, plaintiff’s motion, defendants Randall San Miguel and Kimberly Coleman’s cross-motion, and the Val Auto Defendants’ cross-motion are all denied.

Accordingly, it is

ORDERED that upon search of the record, pursuant to CPLR 3212(b), the Court finds that plaintiff is entitled to summary judgment as to her own liability for the accident at issue and is free from any and all liability; and it is further

ORDERED that plaintiff’s motion for summary judgment on the issue of liability as against all defendants and to strike their affirmative defenses is denied; and it is further

ORDERED that defendants cross-motion on the issue of liability is denied; and it is further

ORDERED that the complaint is dismissed in its entirety against defendants New York City Transit Authority (d/b/a MTA New York City Transit and Metropolitan Transportation Authority, with costs and disbursement to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants;

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption read as follows:

-----X
BELINDA RAMOS,

Plaintiff,
-against- Index No. 154763/15

VAL AUTO, LLC, ELMIRZO SULTONOV,
RANDALL SAN MIGUEL and KIMBERLY COLEMAN
Defendants

-----X

and it is further;

ORDERED that within 30 days of entry, counsel for plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This Constitutes the Decision/Order of the Court.

7/9/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION
	☐ GRANTED ☒ DENIED	☐ GRANTED IN PART ☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT ☐ REFERENCE