

Motor Veh. Acc. Indem. Corp. v Singletary
2019 NY Slip Op 32997(U)
October 9, 2019
Supreme Court, New York County
Docket Number: 452434/2016
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN

PART

IAS MOTION 33EFM

Justice

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MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

Plaintiff,

INDEX NO. 452434/2016MOTION DATE 04/11/2019MOTION SEQ. NO. 002

- v -

QIYAMAH SINGLETARY,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35

were read on this motion to/for

DISMISS DEFENSE

In this is action to recover “no-fault” benefits paid pursuant to articles 51 and 52 of the Insurance Law to non-party Bathelemy Baptiste, *pro se* defendant, Qiyamah Singletary, now moves to dismiss the complaint of plaintiff, Motor Vehicle Accident Indemnification Corporation. While defendant does not explicitly state which CPLR provision she relies on as a basis for her motion, the court determines that her motion is made pursuant to CPLR 3212. Plaintiff does not oppose defendant’s motion. Oral argument was scheduled on this motion for October 9, 2019, wherein defendant appeared but plaintiff did not.

Factual Background

Plaintiff’s complaint alleges that on February 24, 2013, an uninsured vehicle (New Jersey license plate Z93CKL) owned by defendant, but operated by Bathelemy Baptiste, was involved in a motor vehicle accident at Clarkson Avenue and Rogers Avenues in Brooklyn, New York (NYSCEF # 1, Complaint at ¶3). The complaint claims that plaintiff paid “no fault” first party benefits to or on behalf of Bathelemy Baptiste in the total amount of \$24,852.56 (*id.* at ¶8). The

complaint also alleges that defendant is liable for the cost of the investigation into the underlying incident in the amount of \$21,807.70 (*id.* at ¶5-6). The complaint seeks to recover the total amount of \$46,660.26 from defendant (*id.* at ¶9).

Discussion

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient “evidentiary proof in admissible form” to demonstrate the absence of any material issues of fact (*Madeline D'Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 607 [1st Dept 2012], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] and *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

The burden then shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR 3212[b]; *Sokolowsky*, 101 AD3d 606). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v Steward M Muller Constr. Co.*, 46 NY2d 276, 281-282 [1978]). The Court views the evidence in the light most favorable to the non-moving party, and gives the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

Vehicle and Traffic Law § 388(1) creates a presumption that a driver uses a vehicle with the owner’s express or implied permission which may be rebutted only by substantial evidence sufficient to show that the vehicle was not operated with the owner’s consent (*see Murdza v Zimmerman*, 99 NY2d 375 [2003]; *Leon v. Citywide Towing, Inc.*, 111 AD3d 464, 465 [1st Dept 2013]; *Matter of New York Cent. Mut. Fire Ins. Co. v Dukes*, 14 AD3d 704 [2d Dept 2005]).

Here, defendant establishes her entitlement to dismissal of the complaint by demonstrating that the subject vehicle was not operated with her consent at the time of the underlying motor vehicle accident. In support of her motion, defendant submits her affidavit, wherein she states that on the date of the subject accident, her vehicle was taken without her knowledge and permission (NYSCEF # 31). At oral argument, defendant explains that she leased the subject vehicle to a taxi cab service named "Top City Car Service," (Top City) located in Brooklyn, New York for the period of January 2012 through March 2013. Defendant further explains that Top City would in turn lease the vehicle to drivers. Defendant states that in February 2013, the vehicle was decommissioned and put up for sale by Top City. Defendant states that the vehicle remained at Top City through March 2013. The insurance on the vehicle was canceled as of January 5, 2013.

Defendant also submits the affidavit from Phillip Cleopha (Cleopha), the acting manager for defendant's vehicle at Top City, wherein he states that defendant decommissioned her vehicle for service in February 2013 with the intention to sell the vehicle (NYSCEF # 34). Cleopha further states that on the date of the accident, Bathelemy Baptiste was not authorized to operate the vehicle in question and did not indicate that he was taking the vehicle (*id.*).

In addition to the above, defendant also submits a police report dated September 26, 2018, stating that on February 24, 2013, defendant's vehicle was taken without permission and involved in a motor vehicle accident (NYSCEF # 32). Defendant explained that her delay in filing the report was due to her claim that she was not aware of the lawsuit until December 2016.

Accordingly, since plaintiff fails to come forward with any evidence to rebut defendant's showing that the subject vehicle was taken without her permission, plaintiff's complaint is dismissed.

Accordingly, it is hereby

ORDERED that defendant's unopposed motion pursuant to CPLR 3212 for summary dismissal of the complaint is granted, and the complaint is dismissed.

This constitutes the decision and order of the court.

10/9/2019
DATE


MARGARET A. CHAN, J.S.C.

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