

**Dejorge v Metropolitan Foods Inc.**

2019 NY Slip Op 33327(U)

November 6, 2019

Supreme Court, New York County

Docket Number: 160772/2015

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 160772/2015

DIGNA ACEVEDO DEJORGE,
Plaintiff,

MOTION DATE 08/30/2019

MOTION SEQ. NO. 004

- v -

METROPOLITAN FOODS INC. D/B/A/ DRISCOLL FOODS,
NAVISTAR LEASING COMPANY, SALEM TRUCK
LEASING, INC., JOHN DOE ONE, SIGFRIDO JORGE,
JOHN DOES TWO TO FIVE, ABC CORPORATIONS ONE
TO FIVE

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 84, 85, 86, 87, 88,
89, 90, 91, 92, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114,
115, 116

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is for ORDERED that defendant Sigfrido R. Jorge's motion
for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability in favor of
defendant Jorge to dismiss the Complaint and all cross-claims against said defendant and it is
further ORDERED that plaintiff's cross-motion on the issue of liability against defendant
Metropolitan Foods, Inc. d/b/a Driscoll Foods is granted.

This matter stems from a motor vehicle which occurred on April 8, 2014, when
defendant's vehicle, which was transporting plaintiff, was stopped at the intersection of West
Fordham Road and the Deegan Expressway in the County of Bronx, City, and State of New York

when it was struck from behind by a left turning vehicle operated by Orlando Hopes and owned by defendant Metropolitan Foods, Inc. d/b/a Driscoll Foods (“Co-defendants”).

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]). Violation of the Vehicle and Traffic Law (“VTL”) constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep’t 2009]). VTL 1141 states:

Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

Here, defendant has demonstrated that Co-defendants failed to yield and have violated the VTL. In support of his motion, defendant attaches the deposition of plaintiff who testified that at the time of the accident she was seated in the rear of defendant’s stopped vehicle when it was impacted by Co-defendants left turning vehicle (Mot, Exh E at 33, 36, 38-39, & 41). Thus, plaintiff has made a prima facie showing of defendant’s negligence and the burden shifts to defendants to raise an issue of fact.

In opposition, Co-defendants attempt to raise a feigned issue of fact. Co-defendants claim that the VTL does not apply as Co-defendants and defendant’s vehicle were traveling in opposite directions. Co-defendants claim that as defendant’s motion cites VTL 1129(a), which applies to

situations of tailgating, and therefore defendant's motion should be denied. The Court however, upon review of the facts of the accident and defendant's submissions, finds that Co-defendants violated section 1141 of the VTL. Thus, defendant has failed to raise a triable issue of fact and defendant's motion for summary judgment is granted as to Co-defendants' liability. For the reasons mentioned above, plaintiff's motion against Metropolitan Foods, Inc. d/b/a Driscoll Foods on the issue of liability is granted.

Accordingly, it is

ORDERED that defendant's motion for summary judgment for a finding that defendant Sigfrido R. Jorge is free from liability and to dismiss plaintiff's Complaint and any cross-claims against defendant is granted; and it is further

ORDERED that the Complaint is dismissed in its entirety as against defendant Sigfrido R. Jorge, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

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; and it is further

ORDERED that counsel for defendant Sigfrido R. Jorge serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that plaintiff's cross motion for summary judgment on the issue of liability as against defendant Metropolitan Foods, Inc. d/b/a Driscoll Foods is granted; and it is further

ORDERED that within 20 days of entry, counsel for defendant Sigfrido R. Jorge shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

11/6/19  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE