

Melendez v Haniff

2020 NY Slip Op 30614(U)

February 28, 2020

Supreme Court, New York County

Docket Number: 157833/2019

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. 157833/2019

KEILA MELENDEZ,

MOTION DATE 12/17/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

AMEER HANIFF, AFTABADEEN HANIFF, 153 REALTY CORP.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Upon the foregoing documents, it is ORDERED that defendant 153 Realty Corp.'s motion for summary judgment for an Order dismissing with prejudice all claims and cross-claims asserted against said defendant is granted.

This case arises from a motor vehicle accident which occurred on August 18, 2018, at the intersection of 85th Road and 87th street in Woodhaven section of Queens County, City, and State of New York when plaintiff's car was struck by a vehicle operated by defendant Ameer M. Haniff and owned by defendant Aftabadeen M. Haniff. Moving defendant is the owned of the property, 85-01 87th street, Woodhaven, NY, which is the house adjacent to the subject intersection where plaintiff was allegedly injured.

"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]).

Here, defendant 153 Realty Corp. alleges that the accident did not occur on the defendant’s premises and that the subject intersection was not under the custody or control of said defendant. Defendant avers that they had no duty to plaintiff. “Absent a duty running directly to the injured [party] there can be no liability in damages, however careless the conduct or foreseeable the harm” (*Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 466 [1st Dept 2016] quoting *Madison Ave Gourmet Foods v Finlandia Ctr.*, 96NY2d 280, 289 [2001]). Plaintiff must show that the defendant either created the alleged hazardous condition or that they had actual or constructive notice of it (*Piacquadio v. Recine Realty Corp.*, 84 N.Y.2d 967 [1994]).

Plaintiff has made no such showing that defendant created or had constructive notice of a hazardous condition. Furthermore, defendant has attached video footage from the day of the incident depicting the intersection at question (Mot, Exh F). Plaintiff alleges that “overgrown, dense, thick, overrun and unkempt trees, shrubbery, brushes, foliage, and other large vegetation, which, in whole or in part, caused the Plaintiffs accident” (Mot, Exh D at 2). The Court notes that video footage from the intersection and photos of said intersection show no such trees, shrubbery, brushes, foliage, and other large vegetation.

As such, defendant 153 Realty Corp. has made a prima facie showing of entitlement to summary judgment to dismiss the case as against said defendant on the basis that defendant did not owe plaintiff any duty and the burden shifts to plaintiffs to raise an issue of fact.

In opposition, plaintiff fails to raise a triable issue of fact. As noted above, video footage from the day of the incident demonstrates that no obstructions existed on defendant’s property. Thus, the Court need not delve into plaintiff’s argument that defendant violated Highway Law § 319 which protects against physical obstructions. However, the Court does not that regardless, Highway Law § 319 is not applicable to the case at hand as it not applicable to New York City roadways. Plaintiff’s assertions are belied by the video and photo evidence of the accident at issue which demonstrate that no obstruction existed at the time of the accident and that defendant owed no duty to plaintiff who was injured on a public roadway. Thus, plaintiff has failed to demonstrate that defendant 153 Realty Corp. owed a duty to plaintiff and defendant’s motion for summary judgment for an Order dismissing with prejudice all claims and cross-claims asserted against said defendant is granted.

Accordingly, it is

ORDERED that the motion of defendant 153 Realty Corp., for an order that defendants bears no liability for the alleged occurrence is granted; and it is further

ORDERED that the complaint is dismissed in its entirety against 153 Realty Corp., with costs and disbursement 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 read as follows:

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 KEILA MELENDEZ

Plaintiff,

-against-

Index No. 157833/2019

AMEER HANIFF, AFTABADEEN HANIFF
Defendants

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and it is further;

ORDERED that all remaining parties appear for a compliance conference on February 28, 2020 at 9:30AM in room 106 of 80 Centre Street; and it is further

ORDERED that within 30 days of entry, counsel for defendant 153 Realty Corp. serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

2/28/2020
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"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE