

**Butler v Savino**

2020 NY Slip Op 31614(U)

May 22, 2020

Supreme Court, New York County

Docket Number: 450387/19

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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AMIN BUTLER,

Plaintiff,

- v -

DOUGLAS M. SAVINO, ANGELA SAVINO, and KIM C. CHANCEY,

Defendants.

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO., and DECISION AND ORDER. Values: 450387/19, 12/5/19, 001.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that defendant Kim C. Chancey's motion for summary judgment to dismiss the complaint and any and all cross-claims, pursuant to CPLR 3212, is granted. Preliminarily, the Court notes that this action was previously consolidated for joint discovery and trial with another action in which defendant Chancey is the plaintiff. Such consolidated action arises out of the same motor vehicle accident as the accident at issue herein.

Here, defendant Chancey's motion to dismiss is granted as defendant Chancey has established that her vehicle, in which plaintiff was a passenger, was struck in the rear by the vehicle operated by co-defendant Douglas Savino and owned by co-defendant Angela Savino. Thus, defendant Chancey has made out a prima facie case of negligence, and the burden shifts to co-defendants and plaintiff to raise a triable issue of fact. See Winegrad v New York University Medical Center, 64 NY2d 851, 853 (1985). "[A] rear-end collision with a...vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the

accident”. *Cruz v Lise*, 123 AD3d 514 (1<sup>st</sup> Dep’t 2014)(internal quotations omitted).

Furthermore, in the consolidated action, in which defendant Chancey is the plaintiff, her motion was previously granted establishing that co-defendants Douglas Savino and Angela Savino are solely liability for the instant motor vehicle rear end accident. No opposition has been filed by co-defendants Douglas and Angela Savino to oppose the motion herein.

In opposition, plaintiff merely argues that should defendant Chancey’s motion be granted, then summary judgment on the issue of liability should be granted to plaintiff as against defendants Douglas and Angela Savino. As co-defendants and plaintiff fail to provide a non-negligent reason for the rear end collision, or raise any issues of fact as to any negligence on the part of defendant Chancey, the instant motion for summary judgment dismissing the complaint and all cross-claims is granted as to defendant Chancey only.

As for plaintiff’s argument that liability should be granted to her as against co-defendants, CPLR §3212(b) empowers a court presented with a motion for summary judgment to search the record and grant summary judgment to any party that is entitled to such relief. *See Levin v 117 Ltd. Partnership*, 291 AD2d 304, 304 (1<sup>st</sup> Dep’t 2002). The Court of Appeals held that “ ‘[a] motion for summary judgment must be addressed to one or more specific causes of action or defenses’ ” and, therefore, “a court may search the record and grant summary judgment in favor of a nonmoving party only with respect to a cause of action or issue that is the subject of the motions before the court”. *Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429-430 (1996)(internal citations omitted). Here, it is clear that the issue of liability for the instant motor vehicle accident has been raised by defendant Chancey’s motion. In fact, the Court notes that liability for the instant accident has previously been established by the Decision/Order of Hon. Adam Silvera dated June 1, 2018 in the consolidated action (Kim Chancey v Angela Savino and

Douglas Savino, 150606/16). Moreover, a plaintiff who establishes that she was an innocent passenger is entitled to summary judgment on the issue of liability. *See Mello v Narco Cab Corp.*, 105 AD3d 634, 635 (1<sup>st</sup> Dep't 2013). Here, it is undisputed that plaintiff was a passenger in defendant Chancey's vehicle when it was struck in the rear by co-defendants' vehicle. As stated above, neither Savino defendant has opposed the instant motion nor plaintiff's request for summary judgment. Thus, summary judgment on the issue of liability is granted in favor of plaintiff Butler as against defendants Douglas Savino and Angela Savino.

Accordingly, it is

ORDERED that the motion for summary judgment of defendant Kim Chancey is granted and the complaint is dismissed as against her only; and it is further

ORDERED that any and all cross-claims against said defendant Chancey by any and all co-defendants are dismissed; and it is further

ORDERED that the said claims against the remaining defendants are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Kim Chancey dismissing the claims and cross-claims made against her in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that summary judgment is granted on the issue of liability as against defendants Douglas Savino and Angela Savino in favor of plaintiff Butler; and it is further

ORDERED that within 90 days of entry, defendant Chancey shall serve a copy of this

decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



5/22/2020

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