Yang v Burnett
2020 NY Slip Op 33736(U)
November 10, 2020
Supreme Court, New York County
Docket Number: 154221/2019
Judge: Lisa S. Headley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY **PART** IAS MOTION 22

Justice

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ESTHER YANG, YING JUN TENG,

Plaintiff,

- v -

GEORGE BURNETT, LUX CREDIT CONSULTANTS LLC,PAOLA RAMIREZ, JUAN DE LA CRUZ RODRIGUEZ, VIA TRANSPORTATION INC.,ZWANZIG-NY, LLC,FLATIRON TRANSIT LLC

Defendant.

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INDEX NO. 154221/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

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

Procedural History

Defendants, George L. Burnett and Lux Credit Consultants LLC, filed a motion for summary judgment on the issue of liability against co-defendants, Paola V. Ramirez and Juan De La Cruz Rodriguez. The parties were involved in an accident that occurred on June 12, 2017. Plaintiffs were passengers in the vehicle operated by Defendant Burnett and owned by Lux Credit Consultants LLC. Defendant Burnett alleges that he was rear-ended by the vehicle operated by co-defendant Ramirez and owned by co-defendant Rodriguez. To the contrary, co-defendant Ramirez alleges that defendant Burnett merged into traffic and collided with her vehicle.

Initially, plaintiffs, Esther Yang and Ying Jun Teng, filed a cross-motion for summary judgment on the issue of liability against all defendants, George Burnett, Lux Credit Consultants LLC, Paola V. Ramirez and Juan De La Cruz Rodriguez, VIA Transportation, ZANZIG-NY, LLC and Flatiron Transit LLC.

Co-defendants, VIA Transportation, ZANZIG-NY, LLC and Flatiron Transit LLC, filed opposition to plaintiffs' cross-motion to deny the summary judgment as to liability on their behalf because there is no causal relation between them and the subject accident.

Plaintiffs withdrew their motion seeking summary judgment against co-defendants, VIA Transportation, ZANZIG-NY, LLC and Flatiron Transit LLC. Plaintiff requests that the liability of these entities await the time of trial.

Accordingly, plaintiffs' summary judgment motion against co-defendants, VIA Transportation, ZANZIG-NY, LLC and Flatiron Transit LLC, only has been withdrawn and is denied as moot.

Defendants Burnett and Lux Credit Consultants v. Co-Defendants Ramirez v. Rodriguez

As to the remaining parties and motions, first the court will address defendants George L. Burnett and Lux Credit Consultants LLC's motion for summary judgment against co-defendants Paola V. Ramirez and Juan De La Cruz Rodriguez. Defendants George L. Burnett and Lux Credit Consultants LLC allege that they were rear-ended by co-defendant Ramirez, who was operating a vehicle owned by Defendant Rodriguez.

Co-defendants, Paola V. Ramirez and Juan De La Cruz Rodriguez, filed opposition. Co-defendants Paola V. Ramirez and Juan De La Cruz Rodriguez allege that Defendants Burnett and Lux Credit Consultants only submitted an attorney affirmation, and there is no affidavit of direct knowledge to support their motion. Co-defendants Ramirez and Rodriguez also allege that the police report is uncertified and is inadmissible. Co-defendants Ramirez and Rodriguez further argue that the summary judgment is premature as disclosure is not sufficiently complete.

Plaintiffs, Yang and Teng, also filed opposition to Defendants', George L. Burnett and Lux Credit Consultants LLC's, motion for summary judgment against co-defendants, Paola V. Ramirez

and Juan De La Cruz Rodriguez. Plaintiffs argue that there are issues of fact as Defendant Burnett alleges that Defendant Ramirez hit him in the rear of his vehicle, and co-defendant Ramirez alleges that defendant Burnett was merging into traffic when defendant Burnett collided into her vehicle.

Decision: Defendants Burnett and Lux Credit Consultants v. Co-Defendants Ramirez v. Rodriguez

Co-defendant's Burnett and Lux Credit Consultant's motion for summary judgment as to liability against co-defendants Ramirez and Rodriguez is hereby DENIED as issues of fact exist. Plaintiffs' cross-motion asserts that the defendants and co-defendants have dueling explanations of how the accident occurred. Defendant Burnett alleges that he was rear-ended by the car operated by co-defendant Ramirez, and in contrast co-defendant Ramirez argues that defendant Burnett merged into her and caused the collision. Here, as issues of fact exist as to who caused the accident and whether Burnett merged into Ramirez or Ramirez rear-ended Burnett, defendant Burnett's motion for summary judgment as to liability against co-defendants, Ramirez and Rodriguez is hereby denied.

Plaintiffs v. Defendants Burnett and Lux Credit Consultants, Ramirez and Rodriguez

The plaintiffs' cross-motion for summary judgment as to liability against defendants, George Burnett, Lux Credit Consultants LLC, Paola V. Ramirez and Juan De La Cruz Rodriguez, alleges that they were innocent passengers and that they did not cause or contribute to the accident. They further argue that the court has the authority to determine that they, as innocent passengers, are not at fault to the accident. Plaintiffs further argue that the defendants failed to submit any affidavits in opposition to the motion and have not raised any issue of fact.

Defendant Burnett's opposition to plaintiffs' motion asserts that the passenger does not automatically establish liability, and there are issues of fact as to how the accident occurred under the police report. Defendant Burnett asserts that he did not cause the accident because co-defendant

Ramirez rear-ended him, and therefore, plaintiffs have not established that defendant Burnett is liable for the accident. Co-defendants Ramirez and Rodriguez also oppose plaintiffs' cross-motion and argue that the motion is premature as more discovery is necessary. Lastly, plaintiffs submitted reply affirmations stating that defendants failed to submit any affidavits in opposition to the motion and have not raised any issues of fact.

Decision: Plaintiffs v. Defendants Burnett and Lux Credit Consultants, Ramirez and Rodriguez

The plaintiffs' motion for summary judgment against defendants Burnett, Lux Credit Consultants, Ramirez and Rodriguez is hereby GRANTED. Plaintiffs motion, which contends that they were passengers in the vehicle operated by defendant Burnett and owned by Lux Credit Consultant, when such vehicle was allegedly struck in the rear by the vehicle operated by defendant Ramirez and owned by defendant Rodriguez, have made out a *prima facie* case of negligence and the burden shifts to defendants to raise a triable issue of fact. *See, Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 853 (1985). A plaintiff who establishes that he was an innocent passenger is entitled to summary judgment on the issue of liability. *See Mello v. Narco Cab Corp.*, 105 AD3d 634, 635 (1st Dep't 2013).

Further, in opposition, defendants submit only an attorney's affirmation. New York courts have consistently held an attorney's affirmation to be inadequate to oppose a summary judgment motion. *See, GTF Marketing Inc. v. Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 (1985). "[A] bare affirmation of . . . [an] attorney who demonstrated no personal knowledge . . . is without evidentiary value and thus unavailing." *Zuckerman v City of New York*, 49 NY2d 557, 563 (1980). Thus, defendants' attorney's conclusory and speculative affirmation, is insufficient to raise any factual issues to warrant a denial of the within motion. *See, GTF Marketing Inc. v Colonial Aluminum Sales, Inc., supra*.

Moreover, co-defendants' argument that this motion is premature, as discovery is outstanding, also fails. "[D]efendant's failure to raise any factual issues to absolve him of liability or even submit a sworn statement of facts or to credibly explain the failure to do so defeats the need for discovery. Since defendant is the party with knowledge of the factual circumstances as to how…[the accident occurred], discovery would serve no purpose." *Johnson v. Phillips*, 261 A.D.2d 269, (1st Dep't 1999). As such, plaintiffs' motion for summary judgment as to liability against defendants, George Burnett, Lux Credit Consultants LLC, Paola V. Ramirez and Juan De La Cruz Rodriguez is granted.

For the reasons stated herein it is hereby:

ORDERED, Defendants Burnett and Lux Consultant's motion for summary judgment as to liability against co-defendants Ramirez and Rodriguez is **DENIED** in its entirety; and it is further

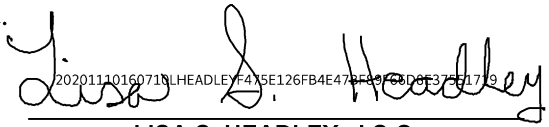
ORDERED, Plaintiffs' cross-motion for summary judgment as to liability against Defendants Burnett, Lux Consultants, Ramirez and Rodriguez, only is hereby **GRANTED**; and it is further

ORDERED, Plaintiffs' cross-motion for summary judgment against VIA Transportation, ZANZIG-NY, LLC and Flatiron Transit LLC, only has been withdrawn and is **DENIED** as moot; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 60 days of entry, Plaintiffs shall serve a copy of this decision/order upon Defendants with notice of entry.

This constitutes the Decision/Order of the Court.



11/10/2020
DATE

LISA S. HEADLEY, J.S.C.

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