

**Ramdeen v Baychu**

2020 NY Slip Op 35419(U)

August 11, 2020

Supreme Court, Kings County

Docket Number: Index No. 513203/2018

Judge: Richard Velasquez

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KINGS COUNTY CLERK  
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2020 AUG 13 PM 9:56

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11<sup>th</sup> day of AUGUST, 2020

PRESENT:  
HON. RICHARD VELASQUEZ  
Justice.

-----X  
MALINIE RAMDEEN,

Plaintiff,

Index No.: 513203/2018  
Decision and Order

-against-

ALFRED A BAYCHU, CANDASARI, A.T.B. CAR AND  
LIMOUSINE SERVICE, INC.,

Defendants,  
-----X

The following papers NYSCEF Doc #'s 42 to 79 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	42-51; 55-65
Opposing Affidavits (Affirmations)_____	52; 67; 69-70; 72; 79
Reply Affidavits_____	54; 68;75, 76, 77

After having heard Oral Argument on AUGUST 5, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Defendant, ALFRED A BAYCHU, moves pursuant to CPLR 3212 for summary judgment dismissing the Complaint and all cross-claims asserted against them on the grounds that no material issues of fact exist. Plaintiff and co-defendants oppose the same. (MS#3).

Defendant, A.T.B. CAR AND LIMOUSINE SERVICE, INC. cross-move pursuant

to CPLR 3212 for an order granting them summary judgment and dismissing this action along with all claims and cross-claims against A.T.B. CAR AND LIMOUSINE SERVICE, INC., on the grounds that no material issues of fact exist. Plaintiff and co-defendants oppose the same. (MS#4).

#### ARGUMENTS

Defendant, ALFRED A BAYCHU in support of its motion for summary judgment, contends it is undisputed that defendant Candasari ran a stop sign at a high rate of speed and caused the accident. Defendants further contend Defendant CANDASARI is precluded from offering any testimony at trial to the contrary and as such they should be granted summary judgment. Plaintiff and co-defendants oppose the same contending there are issues of fact.

Defendant, A.T.B. CAR AND LIMOUSINE SERVICE, INC. in support of their cross-motion contend the action should be dismissed as against them because EBT testimony establishes they did not own the car at the time of the accident and they did not employ defendant CANDASARI at any time. In opposition plaintiff contends at the time of occurrence, plaintiff MALINIE RAMDEEN was a back-seat passenger in a livery cab owned by defendant A.T.B. CAR AND LIMOUSINE SERVICE, INC., and operated by defendant CANDASARI.

#### ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985). Once there is a prima facie showing, the

burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trail of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.*

It is well settled that there can be more than one proximate cause of a motor vehicle accident and that it must be left for the trier of fact to make that determination, and to apportion liability between the negligent parties." *Bullockv. Calabretta*, 119 AD3d 884, 989 NYS2d 862 (2d Dep't 2014); *Jones v. Vialva-Duke*, 106 AD3d 1052, 966 NYS2d 187 (2d Dep't 2013). In the present case, there remains issues of fact as to whether or not the co-defendant A. BAYCHU was also negligent under the facts and circumstances, and whether or not such negligence was a proximate cause of the accident. Therefore, there are issues of fact best left for a trier of fact to determine.


As to Defendant, A.T.B. CAR AND LIMOUSINE SERVICE, INC., cross-motion, the sworn undisputed testimony has established that they did not own the vehicle and did not employ the defendant CANDASARI, as well as defendant CANDASARI's sworn testimony that he was not employed by defendant A.T.B., and that he is the sole owner

of the subject vehicle. In opposition, the plaintiff has failed to offer any evidence in admissible form to dispute said testimony. As such Defendant, A.T.B. CAR AND LIMOUSINE SERVICE, INC. motion for summary judgment is hereby granted.

Accordingly, Defendant, ALFRED A BAYCHU motion for summary judgment is hereby denied, for the reasons stated above. (MS#3). Defendant, A.T.B. CAR AND LIMOUSINE SERVICE, INC., cross-motion, for summary judgment is hereby granted, for the reasons stated above. (MS#4).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York  
AUGUST 11, 2020

  
HON. RICHARD VELASQUEZ

So Ordered  
Hon. Richard Velasquez

AUG 11 2020

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