

Martinez v Santos

2020 NY Slip Op 35553(U)

June 30, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28463/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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EMILY MARTINEZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28463/2019E

JONATHON SANTOS, DANIELS SHARPSMART,
INC., ESTRA REMELUS and AMERICAN UNITED
TRANSPORTATION INC.,

Defendants.
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John R. Higgitt, J.

Upon plaintiff’s February 19, 2020 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; the April 18, 2020 affirmation in opposition of defendants Remelus and American United Transportation Inc. (“the Remelus defendants”); the May 13, 2020 affirmation in opposition of defendants Santos and Daniels Sharpsmart, Inc., (“the Santos defendants”) and the exhibits submitted therewith; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject accident is granted in part.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained as a result of a motor vehicle accident that occurred on September 14, 2017. In support of her motion plaintiff submitted the pleadings, the police accident report,¹ and her affidavit.

Plaintiff averred that at the time of the accident she was a passenger in the Remelus defendants’ vehicle when it was involved in an accident with the Santos defendants’ vehicle.

¹ The police report is hearsay; the responding officer did not witness the accident, and the report contains competing exculpatory statements by defendant Santos and defendant Remelus.

In opposition, the Santos defendants submitted the affidavit of Alan Larose (director of compliance and health & safety for defendant Daniels Sharpsmart, Inc.), authenticating an accident report prepared in the normal course of defendant Daniels Sharpsmart, Inc. business by defendant Santos. In the accident report, defendant Santos describes the accident as follows: he was traveling in the middle lane of I-95, with no intention of changing lanes, when the Remelus defendants' vehicle tried to cut him off, causing him to press his brake; the Remelus defendants' vehicle then slammed into the front, passenger's side of the Santos defendants' vehicle.

Plaintiff's affidavit failed to establish, prima facie, that one or more of the defendants were negligent in the operation of their respective vehicles. Plaintiff's conclusory affidavit failed to assert any factual averments that would warrant imposing liability against any of the defendants for the subject accident. Therefore, summary judgment on the issue of defendants' liability is inappropriate at this juncture. "[T]he pronouncement in [*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206 (1st Dept 2001)], upon which plaintiff rely,] stands only for the proposition that in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination that [he or] she had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver[s'] negligence" (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 1999]). Plaintiffs must still affirmatively establish the negligence (and causal relationship between the negligence and the accident) of at least one defendant (*see Campbell v Mincello*, _AD3d_, 123 NYS3d 493 [1st Dept 2020]).

Plaintiff did, however, establish that, an "innocent passenger," they are entitled to dismissal of defendants' affirmative defense alleging plaintiff's comparative fault (*see Oluwatayo v Dulinayan, supra*).

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion seeking summary judgment on the issue of defendants' liability is denied; and it is further

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendants' affirmative defenses alleging plaintiff's comparative fault is granted, and the Santos defendants' first affirmative defense and the Remelus defendants' second affirmative defense are dismissed.

The parties are reminded that a compliance conference has been scheduled before the undersigned on October 2, 2020 at 9:30 a.m. in courtroom 407.

This constitutes the decision and order of the court.

Dated: June 30, 2020

John R. Higgitt, J.S.C.

