

Germany v Germany

2020 NY Slip Op 35676(U)

September 1, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28681/2018E

Judge: Veronica G. Hummel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 31

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GERMANY, AHMAD JAMAL

Index No. 0028681/2018

-against-

Hon. VERONICA G. HUMMEL

GERMANY, CAROLYN

Acting Justice Supreme Court

The following papers numbered were read on this motion (Seq. No. 1) for SUMMARY JUDGMENT noticed on June 9, 2020 and submitted August 6, 2020.

Table with 2 columns: Document Description and NYSCEF Doc. #. Rows include Notice of Motion, Cross Motion, and Affirmation in Opposition.

Upon the foregoing papers, it is ordered that this motion by Carloyn Germany ("defendant") seeking summary judgment dismissing Ahmad Jamal Germany's ("plaintiff") complaint as well as all cross claims asserted by Susan C. Vollmer ("co-defendant") and cross motion by plaintiff seeking summary judgment against all defendants and dismissing certain affirmative defenses contained in defendants' answers are decided in accordance with the memorandum decision and order of even date.

Dated: September 1, 2020

Hon. [Signature] VERONICA G. HUMMEL A.J.S.C.

- 1. CHECK ONE... [] CASE DISPOSED IN ITS ENTIRETY [] CASE STILL ACTIVE
2. MOTION IS... [] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE... [] SETTLE ORDER [] SUBMIT ORDER [] SCHEDULE APPEARANCE [] FIDUCIARY APPOINTMENT [] REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 31

-----X
AHMAD JAMAL GERMANY,
Plaintiff,
-against-
CAROLYN GERMANY and SUSAN C. VOLLMER,
Defendants.
-----X

Index No. 28681/2018E
DECISION and ORDER
Mot. Seq. 1

VERONICA G. HUMMEL, A.J.S.C.:

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed in NYSCEF as submitted by the parties regarding the motion of defendant CAROLYN GERMANY (defendant) [Mot. Seq. 1], made pursuant to CPLR 3212, seeking summary judgment as to liability dismissing the complaint of AHMAD JAMAL GERMANY (plaintiff) and also dismissing any and all cross claims of SUSAN C. VOLLMER (co-defendant); and the cross motion by plaintiff seeking partial summary judgment of liability against defendants and striking affirmative defenses.

In this action plaintiff seeks compensatory damages for alleged serious personal injuries sustained on April 12, 2018, as a result of a motor vehicle accident which occurred while the vehicle operated by defendant was stopped at a red light and was struck in the rear by the vehicle operated by co-defendant. Plaintiff was a passenger in the vehicle operated by his mother Carolyn Germany.

The motion in chief seeks summary judgment dismissing the plaintiff's complaint and all cross claims on the basis that the operator of the vehicle did not breach any duty to the plaintiff and that the co-defendant is solely at fault for causing the accident. There have been no papers filed opposing the relief sought and accordingly, the motion is granted on default. Plaintiff's complaint against defendant Carolyn Germany is severed and dismissed as are the cross claims asserted by co-defendant Vollmer against defendant Carolyn Germany.

The cross motion by plaintiff seeking summary judgment of liability is granted solely as against the co-defendant (Vollmer) and denied, based on the above conclusion, with respect to

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defendant (Germany). Again, no papers in opposition have been filed by Vollmer and as such the motion as against Vollmer is granted on default.

The cross motion also seeks to strike the affirmative defenses contained in Vollmer’s answer, namely culpable conduct, encompassing claims of comparative negligence, assumption of the risk and failure to wear a seat belt. In light of Vollmer’s failure to oppose the motion, the cross motion is granted on default and the affirmative defenses are dismissed.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of the motion of defendant CAROLYN GERMANY [Mot. Seq. 1], made pursuant to CPLR 3212, that seeks an order granting summary judgment as to liability and dismissing the complaint of plaintiff AHMAD JAMAL GERMANY and dismissing the cross claims of co-defendant SUSAN C. VOLLMER is granted without opposition; and it is further

ORDERED that that the cross motion of plaintiff AHMAD JAMAL GERMANY made pursuant to CPLR 3212, seeking an order granting partial summary judgment as to liability and dismissing the affirmative defenses of defendant SUSAN C. VOLLMER is granted without opposition; and it is further

ORDERED that the caption shall be hereafter amended to delete the name of defendant Carolyn Germany; and the amended caption shall read as follows:

-----X
AHMAD JAMAL GERMANY, Index No. 28681/2018E
Plaintiff,
-against-
SUSANC. VOLLMER, Defendant.
-----X

and it is further

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ORDERED that the Clerk of the Court shall enter judgment in favor of defendant CAROLYN GERMANY dismissing the complaint and the crossclaims against her and severing the remaining action.

The remaining parties are reminded of the compliance conference scheduled in this matter on October 6, 2020 at 9:30 A.M.

This constitutes the decision and order of the court.

Dated: September 1, 2020

ENTER:



HON. VERONICA G. HUMMEL, A.J.S.C.