

Rivera v Bulu

2021 NY Slip Op 30260(U)

January 26, 2021

Supreme Court, Kings County

Docket Number: 520450/2016

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

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 26th day of JANUARY, 2021

P R E S E N T:

HON. RICHARD VELASQUEZ, Justice.

-----X

RALPH RIVERA,

Plaintiff,

Index No.: 520450/2016
Decision and Order

-against-

ABDUL BULU AND SHAH SUJON,

Defendants,

-----X

ABDUL BULU AND SHAH SUJON,

Third-Party Plaintiffs,

-against-

RICHARD RIVERA AND GLORIA RIVERA,

Third-Party Defendants,

-----X

The following papers NYSCEF Doc #'s 63 to 71 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	63-66
Opposing Affidavits (Affirmations)_____	68-70
Reply Affidavits (Affirmations)_____	71

After having heard Oral Argument on OCTOBER 26, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Third-Party defendant GLORIA RIVERA moves pursuant to CPLR 3212 for an order granting summary judgment and dismissal of the third-party lawsuit against third-

party defendant Gloria Rivera. (MS#5).

This matter arises from an alleged two-vehicle accident that happened on May 3, 2016 on Eliot Avenue in Queens. A motor vehicle being operated by Ralph Rives, and a motor vehicle being operated by Shah Sujon and owned by Abdul Bulu, were in a collision. Thereafter, Defendant Sujon commenced a third party action contending the plaintiff was not driving but third party defendant Gloria Rivera was driving at the time of the accident.

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 NY2d 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 trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 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.* The proponent of a motion for summary judgment carries the

initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Zuckerman v. City of New York*, 49 NY2d 557 [1990].) Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v. Algaze*, 84 NY2d 1019 [1995]).

In the present case, on March 9, 2018, plaintiff Ralph Rivera appeared for a deposition and testified as follows (transcript annexed as Exhibit "E" to moving papers). Plaintiff resides at 438 Himrod Apartment 1R, Brooklyn, New York; plaintiff testified he is married to Gloria Rivera. (Pages 5-6; 10). On May 3, 2016 plaintiff was involved in an accident at or near the intersection of Eliot Avenue and 60th Road, Queens. Plaintiff testified he was driving a 2010 Toyota Camry which he owned. Plaintiff testified his wife, Gloria, was sitting in the front passenger seat at the time of the accident. Plaintiff testified she was not driving the Rivera vehicle at the time of the accident, nor had she driven the vehicle at all any time that day. (Pages 10-11; 15-17, 25; 58-59). As such, the undisputed evidence establishes that Ralph Rivera was operating his vehicle, and there is no proof that third-party defendant Gloria Rivera was at the wheel, as alleged by defendants Sujon in their third-party complaint.

Moreover, by Order dated November 7, 2019, defendant Sujon was precluded from testifying at trial, offering any evidence at trial, or offering affidavits in opposition to summary judgment motions. In the present case, third-party defendant Gloria Rivera has established her entitlement to summary dismissal of the third-party complaint, and there is no proof on the record, nor will there be any forthcoming, to create triable issue

of fact sufficient to defeat her motion.

Accordingly, Third-Party defendant GLORIA RIVERA motion for summary judgment and dismissal of the third-party lawsuit against third-party defendant Gloria Rivera is hereby granted, for the reasons stated above. (MS#5).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
January 26, 2021

ENTER FORTHWITH:


A handwritten signature in black ink, appearing to read 'Richard Velasquez', is written over a horizontal line.

HON. RICHARD VELASQUEZ