

<b>Prinsilma v Williams</b>
2021 NY Slip Op 31727(U)
May 10, 2021
Supreme Court, Kings County
Docket Number: 513565/2018
Judge: Carl J. Landicino
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At an IAS Term, Part 81 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 10<sup>th</sup> day of May, 2021.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X  
DUQUERLEAU PRINSILMA, MARIE C. PAUL  
and JEAN JOSEPH O. HILAIRE,  
*Plaintiffs,*

Index No.: 513565/2018

DECISION AND ORDER

-against-

Motion Sequence #1

LAVERNE J. WILLIAMS, SHANTEL G. BRYANT  
and CHRISTOPHER M. SERNA,  
*Defendants.*

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

Papers Numbered (NYSCEF)

- Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed ..... 18-29,
- Opposing Affidavits (Affirmations)..... 30-32,
- Reply Affidavits (Affirmations) ..... 33,

After a review of the papers and oral argument on the motion the Court finds as follows:

This lawsuit arises out of a motor vehicle accident that allegedly occurred on July 20, 2017. Plaintiffs, Duquerleau Prinsilma, Jean Joseph O. Hilaire<sup>1</sup> and Marie C. Paul (Prinsilma and Paul are hereinafter referred to collectively as the "Plaintiffs") allege in their Complaint that they suffered personal injuries while passengers in a vehicle owned by Defendant Laverne J. Williams, and operated by defendant, Shantel G. Bryant (hereinafter the "Bryant Defendants") that collided with a vehicle owned and operated by Defendant, Christopher M. Serna (hereinafter "Defendant

<sup>1</sup> Plaintiff Jean Joseph O. Hilaire has settled against all the named defendants.

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Serna").<sup>2</sup> The collision occurred on Merrick Road at or near its intersection with North Village Avenue in Nassau County, New York.

Defendant Serna now moves (Motion Sequence #1) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the Complaint and all Cross-claims against him. Defendant Serna contends that he bears no responsibility for the collision at issue. Specifically, Defendant Serna contends that the collision occurred because the Bryant Defendants' vehicle made an unsafe lane change and as a result collided with his vehicle.

The Plaintiffs oppose the motion and argue that it should be denied. The Plaintiffs contend that the motion should be denied as there are triable issues of fact regarding the manner in which the accident occurred. Specifically, the Plaintiffs contend that there is an issue of fact regarding Defendant Serna's own culpability and whether Defendant Serna had time to take reasonable evasive action in order to avoid the collision.

It has long been established that "[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

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<sup>2</sup> Plaintiffs Duquerleau Prinsilma and Marie C. Paul have settled with the Bryant Defendants. As such, the existing controversy remaining concerns Plaintiffs Prinsilma and Paul against Defendant Serna.

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning to the merits of the motion by Defendant Serna, the Court finds that he has met his *prima facie* burden. In support of his motion, Defendant Serna relies on his own deposition and a Police Accident Report. Defendant Serna stated that he had been stopped at an intersection and started moving once the traffic light turned green. (See Defendant Serna’s Motion, Exhibit “G” Page 21). When asked when he first saw the vehicle in which the Plaintiffs were passengers (Bryant vehicle), Defendant Serna stated that “my car has sensors around it that if a car gets close, it beeps.” Defendant Serna then stated that “once I heard the beep, I looked into in [sic] my side, my side view mirror and I seen [sic] a car coming directly at me.” Defendant Serna then stated that, “I tried to speed up and get out of the way of the car coming, but if I would have went [sic] more into the left, I would have been on oncoming traffic, so I couldn’t get away from the actual accident.” (See Defendant Serna’s Motion, Exhibit “G” Page 22). Serna indicates by his testimony that the Bryant vehicle violated VTL 1128(a), the Bryant vehicle hit him in the rear quarter panel of the passenger side of his vehicle, and he was unable to avoid the collision.

In opposition, the plaintiff has failed to raise a triable issue of fact. The Plaintiffs’ position that the Defendant shared some responsibility for the accident in that he could have avoided the collision is speculative. Neither Prinsilma nor Paul stated that they saw the collision occur and

Defendant Bryant did not present an affidavit or testimony. "Mere speculation that the defendant may have failed to take some unspecified accident-avoidance measures or in some other way contributed to the occurrence of the accident is insufficient to defeat a motion for summary judgment." *Williams v. Econ*, 221 AD2d 429, 430, 633 N.Y.S.2d 392 [2d Dept 1995]; *see also Foley v. Santucci*, 135 AD3d 813, 814, 23 N.Y.S.3d 338 [2d Dept 2016]; *Morowitz v. Naughton*, 150 AD2d 536, 541 N.Y.S.2d 122, 124 [2d Dept 1989].

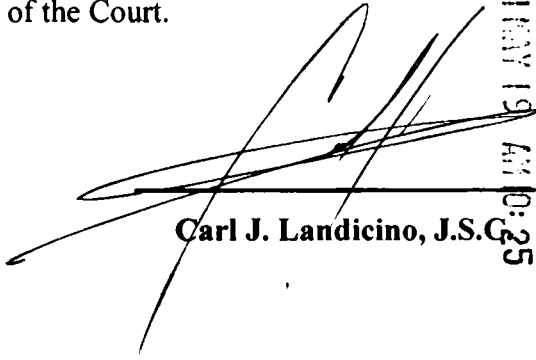
Moreover, the motion is not premature. Defendant Serna's deposition testimony is sufficient to establish his *prima facie* showing and the Note of Issue has been filed. Moreover, the Plaintiffs "failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of the [Shantel Bryant]." *Lazarre v. Gragston*, 164 AD3d 574, 575, 81 N.Y.S.3d 541, 543 [2d Dept 2018]; *see also Romain v. City of New York*, 177 AD3d 590, 592, 112 N.Y.S.3d 162, 164 [2d Dept 2019]. In any event, prematurity was not raised in the motion papers and was only asserted during oral argument.

Based on the foregoing, it is hereby ORDERED as follows:

Defendant Serna's motion (motion sequence #1) for summary judgment is granted. The Complaint and all Cross-claims are dismissed as against Defendant Serna.

The foregoing constitutes the Decision and Order of the Court.

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