

Williams v Trust

2021 NY Slip Op 33387(U)

March 31, 2021

Supreme Court, Westchester County

Docket Number: Index No. 63742/2017

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

-----X
TANYA A. WILLIAMS,
Plaintiff,

DECISION & ORDER
Index No. 63742/2017
Seq. # 2

-against-

DONLEN TRUST, SELLE GUEYE SPIROS ARGIROS
And ARIANA ARGIROS,
Defendants.
-----X

The following papers were read on a motion for summary judgment seeking dismissal of the action:

- Notice of Motion/Affirmation/Exhibits A-D
- Affirmation in Opposition
- Reply Affirmation 11

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff commenced this action by filing a summons and complaint on September 8, 2017, seeking money damages for alleged injuries sustained on October 10, 2014, in a three vehicle accident. The plaintiff's vehicle was the first vehicle with the defendant, Ariana Argiros operating the second vehicle, which was owned by the defendant, Spiros Argiros. The third vehicle was operated by the defendant, Selle Gueye and owned by the defendant, Donlen Trust. All defendants defaulted, but the Argiros' default was vacated. The plaintiff subsequently filed a Stipulation of Discontinuance as to Selle Gueye and Donlen Trust.

The defendants, Ariana Argiros and Spiros Argiros, by their attorney, now file the instant motion seeking to dismiss all claims against them. The attorney argues that the plaintiff testified at her deposition that the impact to her vehicle occurred after she heard a sound and that she heard a boom and then another boom. The attorney further argues that the plaintiff testified that she spoke to the driver of the vehicle that struck her vehicle and thought at that time simply that the second vehicle had hit her vehicle, but when she saw the third vehicle and the damage to it, she could see that the third vehicle hit the second vehicle, which then in turn hit her vehicle. The defendants' attorney also argues that Spiros Argiros testified that Ariana Argiros told him that she was stopped when her vehicle was hit from the back and pushed forward.

The plaintiff submits her attorney's affirmation in opposition, who argues that the deposition of Spiros Argiros is inadmissible with respect to those statements made by Ariana Argiros to him, since they are hearsay and not within any recognized exception. The attorney further argues that the plaintiff's testimony does not establish that the moving defendants were not negligent and not a proximate cause of the accident, since they have not offered any proof in admissible form as to how long the vehicle operated by Ariana Argiros was behind the plaintiff's vehicle or was travelling in the lane in which the accident happened. The attorney states that, giving the plaintiff every reasonable inference as the non-moving party, the Court should infer that the moving defendant's vehicle made a sudden lane change and then stopped short, causing the accident.

The defendants file a reply affirmation asserting that the plaintiff's opposition does not contain any substantive evidence nor any substantive argument why summary judgment should not be denied and there is no evidence that Ariana Argiros was

negligent.

DISCUSSION

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law, (see *Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway. (NY VTL § 1129[a]).

A rear-end collision creates a presumption that the operator of the second vehicle was negligent, thus entitling the injured occupants of the front vehicle to summary judgment on liability unless the driver of the second vehicle can proffer a non-negligent explanation for the collision, (see *Agramonte v City of New York*, 288 AD2d 75, 76 [2001]); *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]). "In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle (see *Kuris v El Sol Contr. & Constr.*

Corp., 116 AD3d 675 [2d Dept 2014]; *see also Niosi v Jones*, 133 AD3d 578 [2d Dept 2015]).

In this case, the evidence submitted by Ariana Argiros and Spiros Argiros establishes, *prima facie*, that they were not at fault in causing the accident and are therefore, entitled to summary judgment as a matter of law, thereby shifting the burden to the plaintiff to demonstrate the existence of a factual issue requiring a trial (*see Bidy v Vanmaltke*, 67 AD3d 845, 846 [2d Dept 2009]).

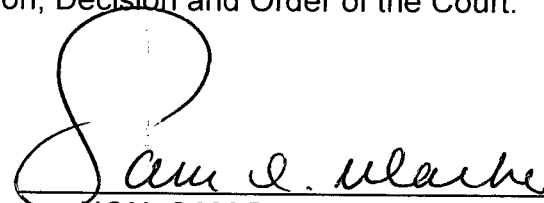
The plaintiff's opposition does not create any issues of fact with regard to the defendants' liability. The plaintiff failed to submit an affidavit in opposition and the plaintiff testified that she could see that Ariana Argiros' vehicle was struck first by the third vehicle. The plaintiff offered nothing in opposition to dispute such testimony and Spiros Argiros' testimony is not necessary to grant the motion.

Accordingly, based on the foregoing, it is

ORDERED that the motion for summary judgment, is granted and all claims against Ariana Argiros and Spiros Argiros are dismissed.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
March 31, 2021



HON. SAM D. WALKER, J.S.C.