

**Verona v Goldstone**

2021 NY Slip Op 33953(U)

April 12, 2021

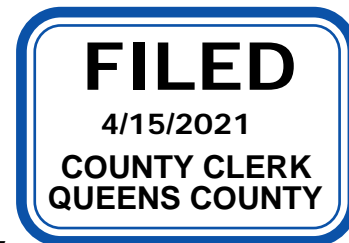
Supreme Court, Queens County

Docket Number: Index No. 710479/18

Judge: Timothy J. Dufficy

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

ROSE VERONA,

Plaintiff,

-against-

Index No.: 710479/18
Mot. Date: 4/6/21
Mot. Seq. 1 and 2

ROBERT GOLDSTONE and JAMES WEILLER,

Defendants.

The following papers were read on these motions by defendants for an order, inter alia: vacating the Note of Issue and Certificate of Readiness; directing plaintiff to appear for IMEs and EBTs; and extending the defendants' time to move for summary judgment to one hundred twenty (120) days from the completion of discovery; and on the cross-motion by plaintiff for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability, as there is no liability on the plaintiff's part regarding the happening of the motor vehicle accident; and on the cross-motion by plaintiff for an order, inter alia, pursuant to CPLR 3126, striking the Answer of defendant Lucille R. James s/h/a James Weiller.

PAPERS
NUMBERED

Mot. Seq. 1

Table listing Mot. Seq. 1 items: Notice of Motion-Affidavits-Exhibits (EF 16-23), Notice of Cross-Motion-Affidavits-Exhibits (EF 29-39), Replying Affidavits-Exhibits (EF 50-51), Answering Affidavits (EF 54-55), Stipulation (EF 56)

Mot. Seq. 2

Table listing Mot. Seq. 2 items: Notice of Motion-Affidavits-Exhibits (EF 24-28), Notice of Cross-Motion-Affidavits-Exhibits (EF 40-49), Stipulation (EF 47)

At the outset, the Court notes that the motions, marked as Motion Sequence Nos. 1 and 2 are consolidated solely for purposes of disposition of the instant motions.

Upon the foregoing papers, it is ordered that the motions and cross-motions are granted as set forth below.

The underlying action arises out of a motor vehicle accident, that occurred on May 10, 2016, on Weilson Street, in Queens County, New York. It is undisputed, that at the time of the accident, plaintiff Rose Verona was a passenger in a vehicle operated by defendant Lucille R. James s/h/a James Weiller, which vehicle made contact with the vehicle operated by defendant Robert Goldstone.

Turning first to plaintiff's cross-motion, plaintiff seeks an order, pursuant to CPLR 3212, granting her summary judgment on the issue of liability. Such is granted. Via submission of, *inter alia*, plaintiff's own affidavit, she established a *prima facie* case that she was an innocent passenger, who was, in no way at fault for the happening of the accident.

No triable issues of fact have been raised in opposition by defendants. Defendants have failed to adduce proof in admissible form sufficient to oppose the relief requested, having submitted no affidavit by anyone with personal knowledge of the facts (*see* CPLR 3212). It is well settled that an affirmation from a party's attorney who lacks personal knowledge of the facts, is of no probative value (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Wisniewski v Kraft*, 242 AD2d 290 [2d Dept 1997]; *Lupinsky v Windham Constr. Corp.*, 293 AD2d 317 [1st Dept 2002]).

Furthermore, defendant Robert Goldstone's argument that summary judgment is premature because discovery has not been completed and that depositions are outstanding, is unavailing. Defendants have failed to demonstrate that facts essential to oppose the motion may exist but cannot then be stated. "Mere hope that somehow [a party] will uncover evidence that will prove a case provides no basis pursuant to CPLR 3212(f) for postponing a determination of a summary judgment motion" (*Plotkin v Franklin*, 179 AD2d 746 [2d Dept 1992] [internal citations omitted]).

Therefore, plaintiff is entitled to an order declaring that she was an innocent passenger, pursuant to CPLR 3212(g), when the accident occurred. As such, plaintiff's cross-motion regarding liability is granted.

Turning next to the parties motions and cross-motions regarding discovery, same are granted, pursuant to the e-filed Stipulation of the parties, dated April 5, 2021, as set forth below.

Accordingly, it is

**ORDERED** that plaintiff's cross-motion seeking summary judgment on liability grounds, on the grounds that she was not liable for the happening of the accident is granted; and it is further

**ORDERED** that plaintiff is entitled to the issuance of an order, pursuant to CPLR 3212(g), specifying that she was an innocent passenger when the accident occurred, and as such is free from comparative fault in the happening of the accident; and it is further

**ORDERED** that the motions by defendants and the plaintiff's cross-motion regarding discovery are granted only to the extent directed below, in that: it is

**ORDERED** that plaintiff Rose Verona is to appear virtually for an examination before trial (EBT), via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **on or before June 15, 2021**,; and it is further

**ORDERED** that defendant Robert Goldstone is to appear virtually for an EBT (EBT), via Skype for Business, Zoom, Skype, Microsoft Teams or its equal on or before **June 22, 2021**; and it is further

**ORDERED** that defendant Lucille R. James s/h/a James Weiller is to appear virtually for an EBT, via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, on or before **June 29, 2021**; and it is further

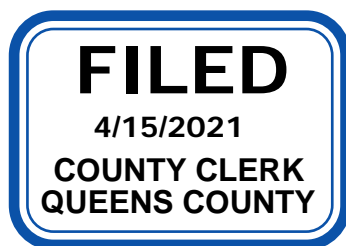
**ORDERED** that the defendants are to designate the IME doctor, within forty-five (45) days of the completion of plaintiff's EBT; and it is further

**ORDERED** that the plaintiff is to appear for her IME, within forty-five (45) days of the designation; and it is further

**ORDERED** that the parties' time to file dispositive motions is hereby extended until 120 days after the completion of discovery.

The foregoing constitutes the decision and order of the Court.

**Dated: April 12, 2021**



A handwritten signature in black ink, appearing to read "T. Dufficy".

**TIMOTHY J. DUFFICY, J.S.C.**