

Barber v Beverly Hills Limo & Corp. Coach, Inc.

2021 NY Slip Op 34010(U)

June 1, 2021

Supreme Court, Bronx County

Docket Number: Index No. 30681/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 34

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EBONY BARBER,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30681/2018E

BEVERLY HILLS LIMO & CORPORATE COACH,
INC., RAUL PEREZ, and MICHELLE R. MONCION,

Defendants.
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John R. Higgitt, J.

Upon defendant Moncion’s March 10, 2021 notice of motion and the affirmation and exhibits submitted in support thereof; the March 15, 2021 affirmation in opposition of defendants Beverly Hills Limo & Corporate Coach, Inc. and Perez (“the Beverly Hills defendants”) and the exhibits submitted therewith; defendant Moncion’s March 25, 2021 affirmation in reply; plaintiff’s April 4, 2021 affirmation in opposition and the exhibits submitted therewith; defendant Moncion’s April 13, 2021 affirmation in reply; and due deliberation; defendant Moncion’s motion to renew her prior summary judgment motion is granted, and, upon renewal, defendant Moncion’s prior summary judgment motion dismissing the complaint as against her and the cross claims against her is denied.

This is a negligence action to recover damages for injuries that plaintiff allegedly sustained in a motor vehicle accident. Defendant Moncion renews her prior motion for summary judgment after that motion was denied as premature, without prejudice to renew upon the filing of the note of issue and certificate of readiness.

On renewal, defendant Moncion argues that her motion for summary judgment should be granted, and the complaint should be dismissed as against her, because she is not liable for the

accident. Defendant Moncion asserts that she was legally parked when the Beverly Hills defendants' vehicle struck her vehicle while making a right-hand turn.

In support of her motion, defendant Moncion submits, among other things, the pleadings and the transcripts of the parties' deposition testimony. Plaintiff testified that she was a passenger in defendant Moncion's vehicle, which was parked in the left hand lane of the service road of Pelham Parkway South, when the Beverly Hills defendants' vehicle, which was making a right turn from the service road onto Lurting Avenue, struck the vehicle that plaintiff occupied. The points of impact were the front passenger's side of defendant Moncion's vehicle and the rear driver's side of the Beverly Hills defendants' vehicle.¹

Defendant Perez testified that he was traveling on the service road of Pelham Parkway South when he made a right-hand turn onto Lurting Avenue. Defendant Perez testified that, before making his turn, he noticed a white van parked to his right near the intersection, as well as defendant Moncion's vehicle. Defendant Perez stated that defendant Moncion's vehicle was parked in a no-standing zone. Defendant Perez testified that, while he completed his right-hand turn, he focused on the vehicle to his right to avoid a collision. Defendant Perez did not know that his vehicle had struck another until a woman notified him that he had struck defendant Moncion's vehicle.

In opposition to the renewal motion, the Beverly Hills defendants submit the affidavit of Richard Hermance, an accident reconstruction expert.² Based on his review, among other things, of the parties' deposition testimony deposition, the police report, photographs, and an inspection of the Beverly Hills defendants' vehicle, Hermance averred that the distance between the alleged location of defendant Moncion's car and Lurting Avenue was 120 feet. Hermance explained that

¹ Defendant Moncion did not witness the accident.

² Hermance's curriculum vitae was submitted in connection with the motion (*see* NYSCEF doc. no. 62).

given the size of the Beverly Hills defendants' vehicle, which was 36 feet long, and the distance from the intersection, the rear of the Beverly Hills defendants' vehicle could have not connected with defendant Moncion's vehicle at the location identified by plaintiff. Hermance concluded that, for the accident to occur as plaintiff described, defendant Moncion's vehicle must have been parked closer to the intersection, in the "No Standing Zone" area. Thus, the Beverly Hills defendants assert that triable issues of fact exist as to whether defendant Moncion's vehicle was illegally parked at the time of the accident, and whether defendant Moncion's alleged negligence in parking in the "No Standing Zone" was a proximate cause of the accident.

Viewing the evidence in the light most favorable to the non-moving parties and avoiding the resolution of questions of credibility, upon renewal, defendant Moncion's motion for summary judgment is denied. The evidence submitted in support of the renewed motion demonstrates the existence of triable issues of fact as to where defendant Moncion's vehicle was parked and whether the alleged negligence by Moncion in parking the vehicle where she did was a proximate cause of the accident. Notably, the Beverly Hills defendants' version of the accident, as represented in defendant Perez's deposition testimony, is not incredible as a matter of law (*cf. Moorhouse v Standard, N.Y.*, 124 AD3d 1 [1st Dept 2014]). Therefore, defendant Moncion failed to make a prima facie showing of entitlement to judgment as a matter of law. Even assuming, arguendo, that defendant Moncion made a prima facie showing of entitlement to judgment as a matter of law, the Beverly Hills defendants raised triable issues of fact.³

Accordingly, it is hereby

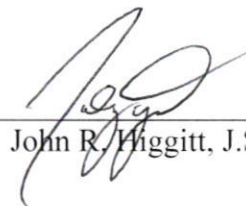
³ Contrary to defendant Moncion's assertion, the affidavit of the Beverly Hills defendants' expert is not speculative or conclusory, and it is based, at least in part, on the parties' deposition testimony and an inspection of the Beverly Hills defendants' vehicle (*see Cabrera v Port Auth. of N.Y. & N.J.*, 185 AD3d 491 [1st Dept 2020]).

ORDERED, that defendant Moncion's motion for leave to renew her prior summary judgment motion is granted; and it is further

ORDERED, that, upon renewal, defendant Moncion's motion for summary judgment dismissing the complaint as against her and the cross claims against her is denied.

This constitutes the decision and order of the court.

Dated: June 1, 2021



John R. Higgitt, J.S.C.