

Moraskin v Lati

2022 NY Slip Op 31641(U)

March 30, 2022

Supreme Court, Kings County

Docket Number: Index No. 504573/2021

Judge: Ingrid Joseph

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At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of MARCH 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
Nicole M. Moraskin and Jelissa E. Moras,

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Plaintiffs,

Mot. Seq. No.: 1 & 2

-against

Rina Lati,

Defendant.

-----X

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the Motion.

<u>Papers</u>	<u>NYSCEF Nos.</u>
Notice of Motion and Affidavits/Affirmations Annexed.....	6-12; 15-22
Affirmation in Opposition Papers.....	30; 25-26
Reply to Opposition Papers.....	31-32; 27-28

Upon the foregoing papers, Nicole M. Moraskin and Jelissa E. Moras (“Plaintiffs”) move (MS#1) for an order, pursuant to CPLR 3212 for summary judgment on the issue of liability and Plaintiff Moraskin moves (MS#2) for an order dismissing Defendant Rina Lati’s (“Defendant”) counterclaim pursuant to CPLR 3211(a)(5) and General Obligations Law 15-108.

Plaintiffs commenced this action to recover damages for personal injuries allegedly sustained as the result of a motor vehicle accident that occurred on July 26, 2019 with the vehicle

owned and operated by Defendant at the intersection of Coney Island Avenue and Avenue V in the County of Kings, City and State of New York ("intersection"). Plaintiff Moras was the front seat passenger in the vehicle operated by Plaintiff Moraskin.

In support of their motion for summary judgment on the issue of liability, Plaintiffs submitted their respective affidavits alleging that while their vehicle was traveling southbound on Coney Island Avenue proceeding into the subject intersection with a green traffic light in their favor, the vehicle operated and owned by Defendant disobeyed the red traffic light causing the collision. In opposition, Defendant submitted an affidavit alleging that she was driving on Avenue V with a green light when she proceeded into the subject intersection and collided with Plaintiffs' vehicle who failed to stop for their red light.

In support of Plaintiff Moraskin on the counterclaim's motion to dismiss, Plaintiff Moraskin submits a copy of the release executed by Plaintiff Moras arguing that this executed release discharged any and all causes of action and claims arising from the subject accident against Plaintiff Moraskin. In opposition, Defendant argued that as she was not a party to the agreement between Plaintiff Moras and Plaintiff Moraskin and that there is no agreement signed by Defendant waiving her right to bring a claim against Plaintiff Moraskin, therefore her counterclaim against Plaintiff Moraskin is valid.

It is well settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact. (*See Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *see also Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980].) To grant summary judgment it must clearly appear that

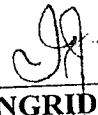
no triable issue of fact is presented (*see Miceli v Purex Corp.*, 84 AD2d 562 [2d Dept 1981]; *see also Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

“A release is a contract, and its construction is governed by contract law” (*Cardinal Holdings, Ltd. v Indotronix Intl. Corp.*, 73 AD3d 960, 962 [2d Dept 2010], quoting *Lee v Boro Realty, LLC*, 39 AD3d 715, 716 [2d Dept 2007]). Generally, “a valid release that is clear and unambiguous on its face constitutes a complete bar to an action on a claim which is the subject of the release absent fraudulent inducement, fraudulent concealment, misrepresentation, mutual mistake or duress” (*Orangetown Home Improvements, LLC v Kiernan*, 84 AD3d 902, 903 [2d Dept 2011], quoting *Global Precast, Inc. v Stonewall Contr. Corp.*, 78 AD3d 432, 432 [1st Dept 2010]). However, when evidence evinces that the parties’ intentions were not reflected in the release, the release does not conclusively establish a defense as a matter of law (*Orangetown Home Improvements, LLC v Kiernan*, 84 AD3d 902, 904 [2d Dept 2011]).

After oral argument and a review of the submitted documents, the Court finds that an issue of fact exists as to the happening of the accident as both drivers contend they had the green light prior to the collision. Thus the motion by Plaintiffs for summary judgment on the issue of liability (MS#1) is denied. In addressing Plaintiff Moraskin’s motion to dismiss the counterclaim, the Court finds that the release signed by Plaintiff Moras relinquishing her claim against Plaintiff Moraskin did not bind Defendant to the terms contained therein, since Plaintiff Moraskin failed to proffer any documentary evidence showing that Defendant was part of that release or affirmatively revoked her cause of action against Plaintiff Moraskin. Therefore, Plaintiff Moraskin’s motion (MS#2) to dismiss the counterclaim is denied.

This shall constitute the Decision and Order of the Court.

ENTER



HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**