

Eismati v Eismati

2022 NY Slip Op 34580(U)

April 11, 2022

Supreme Court, Suffolk County

Docket Number: Index No. 617983/2018

Judge: George M. Nolan

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SHORT FORM ORDER

INDEX 617983/2018
CAL. No. 202100637MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. GEORGE M. NOLAN
Justice of the Supreme Court

MOTION DATE 8/11/21 (002 & 004)
MOTION DATE 10/6/21 (003)
ADJ. DATE 12/16/21 (002 & 004)
ADJ. DATE 11/18/21 (003)
Mot. Seq. # 002 MotD
Mot. Seq. # 003 MG
Mot. Seq. # 004 MD

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AMIR EISMATI AND NADIKA EISMATI,
Plaintiffs,

WILLIAM SCHWITZER & ASSOCIATES
Attorney for Plaintiff
820 2nd Avenue, 10th Floor
New York, NY 10017

- against -

MARTIN, FALLON & MULLE
Attorney for Defendants Michael P. Denny
and Sandra A. Denny
368 Veterans Memorial Highway, Suite 3A
Commack, NY 11725

NASEEMA EISMATI, GHULAM EISMATI,
MICHAEL P. DENNY AND SANDRA A,
DENNY,

GENTILE & TAMBASCO
Attorney for Defendants Naseema Eismati
and Ghulam Eismati
115 Broadhollow Road, Suite 300
Melville, NY 11747

Defendants.
-----X

Upon the following papers read on these motions and cross motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by plaintiffs, dated July 20, 2021, and by the Eismati defendants, dated July 28, 2021 ; Notice of Cross Motion and supporting papers by the Denny defendants, dated August 6, 2021 ; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other ____; it is

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ORDERED that the unopposed motion (# 002) by plaintiffs Amir Eismati and Nadika Eismati, the unopposed motion (#003) by defendants Naseema Eismati and Ghulam Eismati, and the unopposed motion (#004) by defendants Michael Denny and Sandra Denny hereby are consolidated for the purposes of this determination; and it is

ORDERED that the unopposed motion (#002) by plaintiffs Amir Eismati and Nadika Eismati seeking summary judgment in their favor on the issue of negligence as against defendants Michael Denny and Sandra Denny and striking the Denny defendants' first affirmative defense is decided as follows; and it is

ORDERED that the unopposed motion (#003) by defendants Naseema Eismati and Ghulam Eismati seeking summary judgment dismissing the complaint against them is granted; and it is further

ORDERED that the unopposed cross motion (#004) by defendants Michael Denny and Sandra Denny seeking summary judgment dismissing the cause of action of Amir Eismati on the ground that he failed to sustain a serious injury within the meaning of Insurance Law § 5102 (d) as a result of the subject accident is denied, as moot.

Plaintiffs Amir Eismati and Nadika Eismati commenced this action to recover damages for injuries they sustained in a motor vehicle accident that occurred in front of the premises known as the Middle Country Public Library located near the intersection of Eastwood Boulevard and School Street in the Town of Brookhaven on May 18, 2018. Plaintiffs, by their complaint, allege that the accident occurred when the vehicle operated by defendant Michael Denny and owned by defendant Sandra Denny struck the rear of the vehicle operated by defendant Naseema Eismati and owned by defendant Ghulam Eismati while it was stopped in a parking space on School Street to allow plaintiffs to exit the vehicle. At the time of the accident, plaintiffs were passengers in the Eismati vehicle.

Plaintiffs now move for summary judgment in their favor on the issue of negligence against defendants Sandra Denny and Michael Denny ("the Denny defendants"), arguing that Michael Denny was the sole proximate cause of the subject accident and that a prior order of this Court, dated May 13, 2021, in the case *Naseema Eismati and Ghulam Eismati, plaintiffs, v Sandra A. Denny and Michael P. Denny, defendants*, index number 610233/2019, determined that the Denny defendants were the sole proximate cause of the subject accident. They also seek dismissal of the first affirmative defense, i.e., culpable conduct, asserted in the Denny defendants' answer. In support of the motion, plaintiffs submit copies of the pleadings, the parties' deposition transcripts, the affidavit of defendant Naseema Eismati, and the Court's prior order, dated May 13, 2021. In addition, defendants Naseema Eismati and Ghulam Eismati ("the Eismati defendants") move for summary judgment on the same basis as plaintiffs. The Denny defendants have not submitted any papers in opposition to the motions.

Thereafter, the Denny defendants cross-moved for summary judgment dismissing the cause of action by plaintiff Amir Eismati on the ground that the injuries he alleges to have sustained as a result of the subject accident failed to meet the serious injury threshold requirement of Insurance Law § 5102 (d). In support of the motion, the Denny defendants submit copies of the pleadings, Amir Eismati's

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deposition transcript, and the medical reports of Dr. Sheldon Feit, and Dr. Louis Romeo. At the Denny defendants' request, Dr. Feit conducted an independent radiological review of the magnetic resonance images (MRI) films of Amir Eismati's lumbar spine taken on July 23, 2020. Also at the Denny defendants' request, Dr. Romeo conducted an independent orthopedic examination of Amir Eismati on March 18, 2021.

Following submission of the motions and cross motion, a partial stipulation of discontinuance dated December 3, 2021 was entered into between Amir Eismati and the Denny defendants discontinuing the cause of action instituted by Amir Eismati against the Denny defendants only. Thus, the cross motion by the Denny defendants seeking summary judgment dismissing the cause of action by Amir Eismati and the branch of the motion by plaintiffs seeking summary judgment in favor of Amir Eismati as against the Denny defendants are denied, as moot.

The branch of the motion by Nadika Eismati for summary in her favor on the issue of the Denny defendants' liability, and the motion by the Eismati defendants are granted. Res judicata, more specially, collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party whether or not the tribunals or causes of action are the same (*see Reid v Reid*, 198 AD3d 993, 157 NYS3d 52 [2d Dept 2021]; *Tydings v Greenfield, Stein & Senior, LLP*, 11 NY3d 195, 868 NYS2d 563 [2008]; *Buechel v Bain*, 97 NY2d 295, 740 NYS2d 252 [2001]). The doctrine only applies if the issue in the second action is identical to an issue which was raised, decided in a prior action and material in the first action, and the party to be bound had a full and fair opportunity to litigate the issue in the earlier action (*see City of New York v Welsback Elec. Corp.*, 9 NY3d 124, 848 NYS2d 551 [2007]). The party seeking the benefit of collateral estoppel must demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party, and the party to be precluded from relitigating the issue bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination (*see Lennon v 56th & Park [NY] Owner, LLC*, 199 AD3d 64, 153 NYS3d 535 [2d Dept 2021]; *Fowler v Indymac Bank, FSB*, 176 A3d 682, 107 NYS3d 708 [2d Dept 2019]). The policies underlying the application of the doctrine are avoiding relitigation of a decided issue and the possibility of an inconsistent result (*see Mayers v D'Agostino*, 58 NY2d 696, 458 NYS2d 904 [1982]). Furthermore, "an order entered on a motion for summary judgment constitutes a disposition on the merits and, accordingly, is entitled to preclusive effect for purposes of res judicata" (*see Bardi v Warren County Sheriff's Dept.*, 260 AD2d 763, 765, 687 NYS2d 775 [3d Dept 1999]; *see also QFI, Inc. v Shirley*, 60 AD3d 656, 874 NYS2d 238 [2d Dept 2009]; *Kinsman v Turetsky*, 21 AD3d 1246, 804 NYS2d 430 [3d Dept 2005]).

Here, the issue of the Denny defendants' negligence was determined by prior order of this Court, dated May 13, 2021. The Court found that the Denny defendants were the sole proximate of the subject accident's occurrence, since the Eismati defendants established, prima facie, that the Eismati vehicle was completely stopped when it was struck in the rear by the Denny vehicle, which was operated by Michael Denny at the time of the subject accident (*see also Kertesz v Jason Transp. Corp.*, 102 AD3d 658, 957 NYS2d 730 [2d Dept 2013]). The Denny defendants had a full and fair opportunity to litigate the issue in the prior action. Thus, the issue of the Denny defendants' negligence is collaterally estopped from being relitigated, and to hold otherwise would be to violate the policies underlying the doctrine's

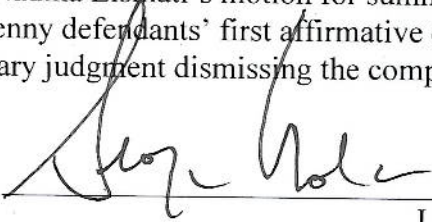
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application (*see Shifer v Shifer*, 165 AD3d 721 [2d Dept 2018]; *Simpson v Alter*, 78 AD3d 813, 911 NYS2d 405 [2d Dept 2010]).

In light of the prior determination in favor of the Eismati defendants, as well as the fact that the record shows that Nadika Eismati was a front seat passenger in the vehicle operated by her mother, Naseema Eismati, which was stopped to allow her and her siblings to exit the vehicle to go the library, when it was struck in the rear by the Denny defendants' vehicle, Nadika Eismati has established, prima facie, that the vehicle in which she was sat was struck in the rear while it was stopped (*see Billis v Tunjian*, 120 AD3d 1168, 992 NYS2d 319 [2d Dept 2014]; *Cajas-Romero v Ward*, 106 AD3d 850, 965 NYS2d 559 [2d Dept 2013]). Moreover, the record shows that prior to the accident, Nadika Eismati was not engaged in any culpable conduct that contributed to the happening of the subject accident, as she was merely a passenger in the vehicle without any control over the vehicle operated by Naseema Eismati (*see Mata v Road Masters Leasing Corp.*, 128 AD3d 780, 10 NYS3d 124 [2d Dept 2015]; *Matos v Salem Truck Leasing*, 105 AD3d 916, 963 NYS2d 366 [2d Dept 2013]; *Brabham v City of New York*, 105 AD3d 881, 963 NYS2d 332 [2d Dept 2013]; *Medina v Rodriguez*, 92 AD3d 850, 939 NYS2d 514 [2d Dept 2012]). Under the circumstances presented, Nadika Eismati's right, as an innocent passenger, to summary judgment on the issue of liability is not in any way restricted by potential issues of comparative negligence among the operators and owners of the vehicles involved in the accident (*see CPLR 3212 [g]; Philip v D&D Carting Co., Inc.*, 138 AD3d 18, 22 NYS3d 75 [2d Dept 2015]; *Rodriguez v Farrell*, 115 AD3d 929, 983 NYS2d 68 [2d Dept 2014]; *Anzel v Pistorino*, 105 AD3d 784, 9622 NYS2d 700 [2d Dept 2013]; *Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 723 NYS2d 162 [2d Dept 2001]).

In opposition, the Denny defendants have failed to come forward with any evidence to rebut Nadika Eismati's prima facie case. In fact, the Denny defendants have not submitted any evidence in opposition to either Nadika Eismati's branch of the motion for summary judgment or the Eismati defendants summary judgment motion. Accordingly, Nadika Eismati's motion for summary judgment in her favor on the issue of negligence and striking the Denny defendants' first affirmative defense is granted, and the Eismati defendants' motion for summary judgment dismissing the complaint is granted.

Dated: April 11, 2022



J.S.C.

____ FINAL DISPOSITION NON-FINAL DISPOSITION