

Acevedo v Hermany Inc.
2022 NY Slip Op 35176(U)
November 15, 2022
Supreme Court, Bronx County
Docket Number: Index No. 30529/2017E
Judge: Bianka Perez
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

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KARINA ACEVEDO,

Index №.30529/2017E

Plaintiff,

Action 1

-against-

Hon. Bianka Perez

HERMANY INC. and BISONO-ESPINAL, M.R,

Justice Supreme Court

Defendants.

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ADA GILSA NUNEZ DE ALMONTE,

Index №.31918/2018E

Plaintiffs,

Action 2

-against-

BERMY DIAZ, KARINA ACEVEDO MUNOZ,
HERMANY INC. and M.R. BISONO-ESPINAL

Defendants.

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The following were read on the motion (NYSEF and CASE MANAGEMENT **Seq 3**) submitted on **July 21, 2022**.

Notice of Motion - Exhibits and Affidavits Annexed	Nyscef No(s). 51-59
Answering Affidavit and Exhibits	Nyscef No(s). 58-59
Reply Affidavit and Exhibits	Nyscef No(s). N/A

Upon the foregoing papers, plaintiff Karina Acevedo's (Acevedo) motion for partial summary judgment on the issue of defendants Hermany INC's (Hermany) and Bisono-Espinal, M. R's (Bisono) liability for causing the subject accident in Action 1 is granted. Defendants Hermany and Bisono oppose the motion.

The above-captioned actions for negligence were commenced to recover for injuries allegedly sustained in a motor vehicle accident that occurred on April 10, 2017, at or near the intersection of Grand Concourse and East 158th Street, in the Bronx County, State of New York. By Decision and Order dated April 26, 2019, Judge Higgitt consolidated the above-captioned actions for joint discovery and trial. In support of the motion, plaintiff Acevedo annexed a copy of

the uncertified police report, an affidavit by plaintiff Acevedo, and refers to the pleadings previously uploaded to NYSCEF under NYSCEF Doc No. 1 and NYSCEF Doc No. 3¹.

In her affidavit, plaintiff Acevedo avers that she was traveling southbound on Grand Concourse near its intersection with East 158th Street, when the vehicle operated by defendant Bisono, and owned by defendant Hermany, which was traveling northbound on Grand Concourse, attempted to make a left turn onto East 158th Street and failed to yield to plaintiff's vehicle, causing the collision. Defendants Bisono and Hermany, oppose arguing that the motion is defective because plaintiff did not attach a copy of the pleadings and that there are questions of fact because plaintiff admitted that she struck defendants' vehicle and that she failed to maintain a proper lookout.

The court's function on motion for summary judgment is issue finding rather than issue determination. *Silurian v Twentieth Century Fox Film Corp.*, 3 NY2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. *Rotuba Extruders v Ceppos*, 46 NY2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. *Stone v Goodson*, 8 NY2d 8, (1960); *Sillman v Twentieth Century Fox Film Corp.*, *supra*. Further, the proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]). Summary judgment is inappropriate where there are material issues of fact in dispute or where more than one conclusion may be drawn from the facts (*see Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039 [2016]).

Further, Vehicle and Traffic Law § 1141 provides that the "driver of a vehicle intending to turn to the left within an intersection ... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard" (VTL § 1141). While a driver is required to "see that which through proper

¹Per CPLR § 2214 (c), in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.

use of [his or her] senses [he or she] should have seen, a driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield" (see *Vainer v. DiSalvo*, 79 A.D.3d 1023 [2d Dept 2010]). "A driver with the right-of-way who only has seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision" (see *Yelder v. Walters*, 64 A.D.3d 762 [2d Dept 2009]).

Plaintiff Acevedo satisfied her prima facie burden, which was made by her annexed affidavit establishing her entitlement to judgment as a matter of law on the issue of defendants Hermany's and Binoso's liability (see CPLR § 3212[b]). The failure of movant to annex the pleadings is not fatal to her motion as the attorney's affirmation refers to the pleadings which were uploaded to NYSCEF under NYSCEF Doc No. 1 and NYSCEF Doc No. 3. (See *Studio A Showroom, LLC v. Yoon*, 99 A.D.3d 632, 952 N.Y.S.2d 879 (2012)). It should be noted that CPLR 2214 (c) was amended by NY Bill Jacket, 2014 A.B. 8972, Ch. 109, and it states that "**[e]xcept when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system**" (see CPLR § 2214 [c]).

In opposition to plaintiff Acevedo's prima facie showing of entitlement to judgment as a matter of law, defendants Hermany and Bisono failed to raise a triable issue of fact. Defendants' contention that there are questions of fact because plaintiff Acevedo admitted that she struck defendants' vehicle, and that she failed to maintain a proper lookout are insufficient to defeat plaintiff Acevedo's prima facie case. Defendants failed to rebut the presumption of negligence for their failure to yield the right of way to plaintiff Acevedo when defendant Bisono attempted to make a left turn in violation of Vehicle and Traffic Law § 1141. Plaintiff Acevedo is entitled to anticipate that defendant Bisono will obey the traffic law, which required him to yield before making a left turn. Thus, plaintiff's motion is granted in its entirety.

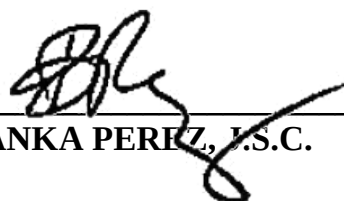
Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the issue of defendants' liability is granted.

This constitutes the decision and order of the Court.

Dated: November 15, 2022

Hon.


BIANKA PEREZ, J.S.C.

1. CHECK ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY

☐ CASE STILL ACTIVE

2. MOTION IS.....

☐ GRANTED

☐ DENIED

☐ GRANTED IN PART

☐ OTHER

3. CHECK IF APPROPRIATE.....

☐ SETTLE ORDER

☐ SUBMIT ORDER

☐ SCHEDULE APPEARANCE

☐ FIDUCIARY APPOINTMENT

☐ REFEREE APPOINTMENT