

Motor Veh. Acc. Indem. Corp. v MP Transp. Corp

2023 NY Slip Op 30111(U)

January 12, 2023

Supreme Court, New York County

Docket Number: Index No. 450369/2019

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. MARY V. ROSADO</u>	PART	33M
	<i>Justice</i>		
-----X		INDEX NO.	<u>450369/2019</u>
MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,		MOTION DATE	<u>10/05/2020, 10/12/2022</u>
Plaintiff,		MOTION SEQ. NO.	<u>001 002</u>
- v -			
MP TRANSPORT CORP, JOHN DOE		DECISION + ORDER ON MOTION	
Defendant.			
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 29 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 30 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, Defendant MP Transport Corp.’s (“Defendant”) motions for summary judgment are denied. Motion Sequence 001 and 002, which were both made by Defendant, contain the same filings, and both seek summary judgment, are joined for disposition.

I. Background

Plaintiff Motor Vehicle Accident Indemnification Corporation (“Plaintiff”) commenced this action on April 1, 2019 (NYSCEF Doc. 1). This action arises out of an alleged motor vehicle accident on July 1, 2014 (*id.* at ¶ 13). Plaintiff alleges that Sudeisha Ortiz (“Ortiz”) was a pedestrian walking on Gleason Avenue at the intersection of Pugsley Avenue in the Bronx when she was struck by a 2001 EAS motor vehicle bearing New Jersey license plate number TJB47K (the “Vehicle”) (*id.* at ¶¶ 13-14). Plaintiff alleges that Defendant owned the Vehicle and was a “financially irresponsible motorist” for failure to insure the motor vehicle pursuant to Articles 51

and 52 of the Insurance Law (*id.* at ¶¶ 7 and 15). Because MP Transport did not have insurance coverage, Ortiz received no-fault benefits from Plaintiff pursuant to the Insurance Law, and Plaintiff paid costs for medical treatment and lost wages totaling \$14,171.05 related to the motor vehicle accident (*id.* at ¶ 17). Plaintiff now seeks to recover sums paid to Ortiz from Defendant pursuant to § 5104(b) of the Insurance Law (*id.* at ¶ 20).

Defendant filed its answer on June 4, 2019 (NYSCEF Doc. 4). Shortly thereafter, Defendant filed its first motion for summary judgment (NYSCEF Doc. 5). The only evidence proffered in support of Motion Sequence 001 is a ten paragraph affidavit executed by Luis Marinos stating in a self-serving and conclusory fashion that Defendant has been shut down for over six years, that Defendant did not own the Vehicle, and that Defendant was not involved in an accident with Ortiz (NYSCEF Doc. 8). In opposition, Plaintiff argued that New Jersey Department of Motor Vehicles shows that the registration information corresponding to the license plate of the Vehicle shows it is owned by Defendant (NYSCEF Doc. 17). Plaintiff also argues that since discovery has not been conducted, including depositions of the relevant party, summary judgment is premature pursuant to CPLR § 3212(f) (NYSCEF Doc. 15). Indeed, there has been no preliminary conference to date, and the motion for summary judgment was made a mere three months after Defendant filed its Answer.

This matter was reassigned to Part 33 on August 26, 2022 (NYSCEF Doc. 22). After reassignment, Defendant filed a second motion for summary judgment (NYSCEF Doc. 23 or “motion sequence 002”). The arguments and filings in motion sequence 002 are repetitive of those in motion sequence 001.

II. Discussion

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

The Court finds that given the evidentiary dearth presented by Defendant in support of its motion for summary judgment, Defendant has not met its heavy burden in demonstrating the absence of any material issues of fact. Indeed, the only evidence provided by Defendant is a conclusory and self-serving affidavit of Luis Marinos (NYSCEF Docs. 8 and 26). Multiple appellate divisions have held that a conclusory, self-serving affidavit by itself will not support a movant’s evidentiary burden (*Lambert v Bonilla*, 201 AD3d 502, 503 [1st Dept 2022]; *Jackson v State*, 94 AD3d 1166, 1167 [3d Dept 2012]; *Feldman v Friedman*, 241 AD2d 433, 434 [1st Dept 1997]).

Moreover, the registration information inquiry from the New Jersey DMV creates a genuine issue of material fact, as those records indicate that Defendant does in fact own the vehicle which purportedly struck Ortiz (NYSEF Doc. 17). Although a police report produced by Plaintiff

in its bill of particulars appears to list a different plate number, the only discrepancy between the two plate numbers is the last letter¹, and therefore, this discrepancy also creates a genuine issue of material fact.

Further, as there has been no preliminary conference, and Plaintiff claims it has not been able to take the necessary depositions which may resolve some of these fact issues, summary judgment is inappropriate pursuant to CPLR 3212(f) (*Column Trading House Ltd. v Beogradska Banka A.D.*, 139 AD3d 577, 578 [1st Dept 2016]; *Blech v West Park Presbyt. Church*, 97 AD3d 443 [1st Dept 2012]). Finally, other procedural infirmities prevent this Court from granting Defendant the relief it seeks, including Defendants' failure to submit a statement of material facts in conformance with 22 NYCRR § 202.8-g.

Thus, the infirmities riddling Defendant's motion for summary judgment prevents this Court from granting Defendant the relief it seeks. As the Court is ruling that summary judgment at this juncture is premature and is denied because Defendant failed to meet their evidentiary burden, the motions are denied without prejudice with leave to renew upon the proper supporting papers.

Accordingly, it is hereby,

ORDERED that Defendant's motions for summary judgment (motion sequences 001 and 002) are denied without prejudice; and it is further

ORDERED that the parties shall submit a proposed preliminary conference order on or before February 1, 2023 via e-mail to SFC-Part33-Clerk@nycourts.gov; and it is further

¹ While Defendant allegedly owns a vehicle with license plate number TJB47K, the police report apparently states the license plate number is TJB47A.

ORDERED that if the parties are unable to agree to a proposed preliminary conference order, the parties shall appear for a preliminary conference on February 8, 2023 at 9:30 a.m. at 60 Centre Street, Room 442, New York, New York 10007; and it is further

ORDERED that within ten (10) days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order with notice of entry upon all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>1/12/2023</u> DATE		<u>Mary V Rosado</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE