

**Gill v Savadogo**

2023 NY Slip Op 30273(U)

January 23, 2023

Supreme Court, New York County

Docket Number: Index No. 161940/2019

Judge: James G. Clynnes

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X INDEX NO. 161940/2019
DOMANIC GILL, MOTION DATE 10/13/2022
Plaintiff, MOTION SEQ. NO. 001

- v -

BOUBACAR SAVADOGO, KARINA PEREZ, MICHAEL L. GUINYARD

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 39, 40, 41

were read on this motion to/for DISMISS

Upon the foregoing documents, the motion by Defendants Karina Perez (Perez) and Michael L. Guinyard (Guinyard), pursuant to CPLR 3212 for an order granting summary judgment in their favor and dismissing the Complaint against them and pursuant to CPLR 3211 (a) (5) dismissing the Complaint on the grounds that Plaintiff's claim against them is barred by the doctrine of res judicata and the cross-motion by Defendant Boubacar Savadogo (Savadogo) for an order vacating and renewing the June 23, 2022 Decision and Order issued under the related action Guinyard v Savadogo, Index 161060/2019 (Action #1)1 are decided as follows:

In this personal injury action, Plaintiff seeks recovery for injuries allegedly sustained as a result of a November 10, 2017 motor vehicle accident between a vehicle operated by Defendant Boubacar Savadogo and a vehicle owned by Perez and operated by Guinyard in which Plaintiff was a passenger.

This action (Action #2) was joined for discovery and trial with a related action arising from the same motor vehicle accident, Guinyard v Savadogo, Index 161060/2019 (Action #1),2 which

1 Savadogo opposition and cross-motion papers were filed under Action #1 (Index 161060/2019, NYSCEF Document Numbers 34-38 [Savadogo's opposition]; 39-43 [Savadogo's cross-motion to vacate and renew]; and 45 and 46 [Savadogo's reply in support of his cross-motion]). Plaintiff Guinyard's opposition to Savadogo's cross-motion was filed under Action #1 (Index 161060/2019, NYSCEF Document Number 44).

2 On October 26, 2021, under Action #1, the Court issued a Decision and Order directing joint discovery and trial of the related actions (Index 161060/2019, NYSCEF Document Number 17).

was discontinued pursuant to a stipulation of discontinuance, dated January 17, 2023 (NYSCEF Document Number 57 under Index 161060/2019)).

The June 23, 2022 Decision and Order issued under Index 161060/2019 (Action #1) granted, without opposition, Plaintiff Guinyard's motion for summary judgment on liability in favor of Guinyard and against Savadogo.

In the instant motion, movants Perez and Guinyard contend that they are entitled to summary judgment and dismissal of the Complaint and that Plaintiff's claim against them is barred by the principle of res judicata (claim preclusion), based upon the June 23, 2022 Decision and Order in Action #1 which granted Guinyard's unopposed motion for summary judgment on liability and determined liability in favor of Guinyard and against Savadogo.

Plaintiff Gill's "opposition" papers contends that the June 23, 2022 Decision and Order should be amended to grant Gill summary judgment on liability in his favor as an innocent passenger in the vehicle owned by Perez and operated by Guinyard.<sup>3</sup>

Defendant Savadogo opposes the instant motion and cross-moves to vacate and renew the June 23, 2022 Decision and Order. Savadogo's opposition and cross-motion include an affidavit, dated October 17, 2022, in which he avers that on November 10, 2017 he was traveling southbound on 7th Avenue; that he stopped at a red light at the intersection of 7th Avenue and W141st Street;; that when the light turned green he proceeded to turn left onto W141st Street; that suddenly a vehicle appeared from his right and collided with the front right passenger side of Savadogo's vehicle; and that "apparently" the vehicle was traveling on W141st Street and ran the red light.

#### **The Motion by Perez and Guinyard**

The instant motion for summary judgment and dismissal of the complaint is denied. The June 23, 2022 Decision and Order was issued without written opposition and Action #1 is discontinued. The Guinyard Affidavit, upon which the June 23, 2022 Decision and Order was based, does not refer to Plaintiff Gill or Defendant Perez who are parties in this action (Action #2) but were not parties in Action #1.

---

<sup>3</sup> Plaintiff Gill has also filed a motion for summary judgment on liability in favor of Gill as an innocent passenger and against Savadogo based upon the June 23, 2022 Decision and Order issued under Action #1 (Motion Sequence #2 in Action #2). Defendant Savadogo's opposition to Gill's motion (Motion #2 in Action #2) is filed under Action #1 (NYSCEF Document Numbers 50-56 and 58-61 under Index 161060/2019).

In support of his motion in Action #1, Plaintiff Guinyard submitted an affidavit in which he averred that he was proceeding southbound in the left traffic lane on 7th Avenue (Adam Clayton Powell, Jr. Boulevard) at a speed of 25 miles per hour at the intersection of W141st Street when the defendant's vehicle, traveling northbound, made a left turn into plaintiff's lane of traffic in front of plaintiff and that plaintiff had only one second to react and could not avoid the collision, establishes prima facie entitlement to summary judgment in favor of plaintiff and against the defendant. In the June 23, 2022 Decision and Order the Court held that Plaintiff Guinyard's affidavit established prima facie negligence by Defendant Savadogo (VTL 1141, *Abboud v Pawelec*, 141 AD3d 431 [1st Dept 2016]) and that Savadogo failed to raise an issue of fact as to liability because he did not submit written opposition to the motion. The Court also found that there was no evidence of comparative negligence by Plaintiff Guinyard.

In this case (Action #2), Savadogo's opposition and cross-motion papers include an affidavit by Savadogo setting forth an account of the events of November 10, 2017 that differs from the account set forth in the Guinyard Affidavit, thereby creating issues of fact sufficient to preclude liability in favor of Perez and Guinyard and against Savadogo. According to Savadogo's affidavit he was traveling south (not north) on 7th Avenue and was turning left (east, not west) when suddenly a vehicle he identifies as "vehicle #2" appeared from his right and collided into his front right passenger side; that apparently, "vehicle #2," was travelling on West 141st Street and ran the red light; and that after the accident two of the passengers from vehicle #2 got out and ran raises an issue of fact sufficient to preclude summary judgment on liability in favor of Perez and Guinyard and against Savadogo. For the foregoing reasons, the motion by Perez and Guinyard is denied.

#### **Savadogo's Cross-Motion**

Savadogo's motion to vacate and renew the June 23, 2022 Decision and Order issued under Action #1 is denied. Action #1 is discontinued. Moreover, the motion fails to set forth a reasonable excuse for movant's failure to file timely opposition to Guinyard's motion for summary judgment on liability in Action #1 and for movant's failure to file a timely motion to renew. The motion is denied.

Accordingly, it is

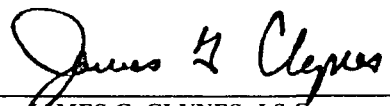
ORDERED the motion by Perez and Guinyard for summary judgment on liability in their favor and dismissal of the complaint and cross-claims against them based upon the June 23, 2022 Decision and Order issued under Action #1 (Index 161060/2019) is denied; and it is further

ORDERED that the cross-motion of defendant Savadogo to vacate and renew the June 23, 2022 Decision and Order is denied; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered and is denied; and it is further

ORDERED that within 30 days of entry, movant-defendants shall serve a copy of this decision/order upon all parties with notice of entry.

1/23/2023  
DATE

  
JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE