

Irizarry v Pinnacle Express Inc.

2023 NY Slip Op 33093(U)

September 8, 2023

Supreme Court, New York County

Docket Number: Index No. 150570/2021

Judge: James G. Clynes

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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: HON. JAMES G. CLYNES PART 22M

Justice

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INDEX NO. 150570/2021

CHRISTINA IRIZARRY,

MOTION DATE 04/15/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

PINNACLE EXPRESS INC, ALLSTATE TRANSPORT INC,
UBER TECHNOLOGIES INC, RASIER-NY LLC, FRANK F
SANTOS, JOHN DOE

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for DISMISS

Upon the foregoing documents, and following oral argument, the motion by Defendant Frank F. Santos for summary judgment and dismissal of the complaint and any cross-claims against Defendant Santos and the cross-motion by Defendants Uber Technologies Inc and Rasier-NY, LLC (the Uber Defendants) for summary judgment and dismissal of the complaint and any cross-claims against them are decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a March 19, 2020 motor vehicle accident between a vehicle owned by Defendant Pinnacle Express, Inc. and operated by nonparty Ramazan Yilmaz and a vehicle operated by Defendant Frank F Santos who was working as an Uber driver, within which Plaintiff was a passenger.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (Winegrad v NY Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue

requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v New York*, 49 NY2d 557 [1980]).

In support of his motion, Defendant Santos relies on the examination before trial (EBT) testimony of Plaintiff, nonparty witness Ramazan Yilmaz, the driver of Defendant Pinnacle's vehicle, as well as his own EBT testimony.

Plaintiff testified that she requested a car through the Uber Application on her phone to drive her home from CVS, Plaintiff sat in the rear passenger side seat, she did not wear her seatbelt. Toward the end of the trip, the vehicle turned onto Barney Street, Plaintiff saw a flatbed truck blocking traffic in the opposite direction, approximately 30 to 50 feet from Plaintiff's home on Barney Street. She saw the truck come to a stop, the vehicle in which she was a passenger stopped about ten feet behind the flatbed but not directly behind it. Plaintiff was gathering her things looking down while the vehicle remained stopped, when she felt one medium contact to the front of the vehicle, causing her body to jerk forward and bounce back.

Nonparty witness Yilmaz testified that he was working as a truck driver transporting cars operating under Pinnacle Express, from where he leased his truck, (although now he operates by himself under Allstate Transport, a company that was formed but was not yet active at the time of the accident). Yilmaz was picking up a Jeep Cherokee from a dealer but had to park on the road about ten feet parallel to where the dealer was located because he could not pull into the private pickup area. In an attempt to get as close to the curb as possible, he reversed about five feet, he does not remember if he honked his horn while backing up, and he moved the truck forward in the spot he intended to park it in, he then exited his vehicle. The driver of the vehicle behind him told him that there was an impact between their vehicles. He checked to see if there was any damage, but saw none, and he saw a space wide enough to walk through between the vehicles. Yilmaz testified that he did not see a passenger at the scene that day, nor did he hear her say anything at the scene of the accident.

Defendant Santos testified that he gave a passenger a ride through the Uber application who sat in the back right side of his vehicle. As he approached the intersection of Saw Mill River Road and Barney Street, he observed a tractor trailer driving down Barney Street. Santos stopped

at the intersection and saw the tractor trailer stop. Santos turned onto Barney Street. The tractor trailer moved forward and backwards to park. Santos arrived at the location on Barney Street, the tractor trailer was stopped, he pulled over to the right, parked the vehicle in front of the location and about ten feet away from the tractor trailer, when approximately ten to fifteen seconds later, he observed the tractor trailer backing up into his vehicle at about five miles per hour. He heard beeping, saw reverse lights, Santos beeped his horn twice and held it, and within two to five seconds the tractor trailer made contact with his vehicle and Santos felt his car rock backward about one inch.

Defendant Santos met his burden for summary judgment by establishing that he is free from liability and the burden shifts to Plaintiff and co-Defendants to raise an issue of fact.

In support of their cross-motion and in support of Defendant Santos' motion, the Uber Defendants contend that Defendant Santos is not negligent, as he was struck while he was lawfully parked and letting out a passenger near her home, and thus the Uber Defendants are not vicariously liable. They further contend that the sole proximate cause of the accident is Yilmaz's decision to reverse his vehicle without first ensuring it was safe to do so. The Uber Defendants also contend that Uber did not own, maintain, operate, or control Defendant Santos' vehicle. They rely on the affidavit of Rachel Perl, a Manager of Regulatory Strategy and Operations for Uber, who affirms that the Uber Defendants did not own, possess, control, or maintain the vehicle driven by Defendant Santos. The Uber Defendants have also met their burden for summary judgment and the burden shifts to Plaintiff and co-Defendants to raise an issue of fact.

In opposition to Defendant Santos' motion and the Uber Defendants' cross-motion, Defendants Pinnacle Express and Allstate Transport rely on the EBT testimony of Yilmaz, contending that issues of fact exist. However, Yilmaz's testimony does not affirmatively deny that he backed into Defendant Santos' vehicle and thus does not raise an issue of fact as to Defendant Santos' and the Uber Defendants' liability.

Plaintiff, in opposition to Defendant Santos' motion and the Uber Defendants' cross-motion, contends that issues of fact exist as to whether Defendant Santos was negligent in parking too close to the tractor trailer and whether he took reasonable care to avoid the collision. Plaintiff

further contends that Defendant Santos' post-accident thoughts on how to avoid the accident raises an issue of fact.

The Court finds that there are no material issues of fact that preclude summary judgment in favor of Defendant Santos and the Uber Defendants. There is no conflicting testimony as to how the accident occurred. As stated above, Yilmaz does not affirmatively deny that he backed into Defendant Santos' vehicle, nor are there conflicting accounts as to how the impact occurred as both Defendant Santos and Plaintiff testified that their vehicle stopped about ten feet behind Yilmaz's vehicle, both the vehicle driven by Yilmaz and Defendant Santos' vehicle were stopped prior to the accident, and there was one impact to the front of Defendant Santos' vehicle causing it to move slightly. Neither Plaintiff's nor Defendants Pinnacle Express and Allstate Transport's oppositions raise a material issue of fact sufficient to preclude summary judgment in favor of Defendant Santos and the Uber Defendants. The motions are granted.

Accordingly, it is

ORDERED that the motion by Defendant Santos for summary judgment and dismissal of the complaint and any cross-claims against Defendant Santos is granted; and it is further

ORDERED that the cross-motion by Defendants Uber Technologies Inc and Rasier-NY, LLC for summary judgment and dismissal of the complaint and any cross-claims against them is granted; and it is further

ORDERED that the action is severed and continued against the remaining Defendants Pinnacle Express Inc. and Allstate Transport Inc., and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on*

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website) and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendants with Notice of Entry.

This constitutes the Decision and Order of the Court.

9/8/2023
DATE

James G. Clynes
JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE