

Shere v Rosenblatt

2023 NY Slip Op 35051(U)

June 20, 2023

Supreme Court, Queens County

Docket Number: Index No. 706352/2020

Judge: Mojgan C. Lancman

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN IAS Part 20

FILED
6/21/2023
COUNTY CLERK
QUEENS COUNTY

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JAGDISHKUMAR R. SHERE and PRADIP PARIKH,

Index No.: 706352/2020

Plaintiffs,

Motion Seq. No.: 3

-against-

Motion Date: 2.15.2023

LOIS M. ROSENBLATT, ESQ., Public Administrator of
Queens County as Administrator of the Estate of JACK
PERRY ECKER, Deceased,

Motion Cal. No.: 19

Defendant.
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The e-filed papers bearing NYSCEF Doc. Nos. 49-60 were read on the motion made by the defendant, Lois M. Rosenblatt, Esq., Public Administrator of Queens County as Administrator of the Estate of Jack Perry Ecker, Deceased (the "Defendant"), for an Order, *inter alia*, granting summary judgment dismissing the complaint of the plaintiff Pradip Parikh ("Parikh").

The Plaintiffs commenced this cause seeking to recover for damages allegedly arising out of a motor vehicle accident that occurred on February 19, 2019 (the "Accident"). Presently before the Court is the Defendant's motion, made pursuant to CPLR §§ 3211 [a] [7] and 3212, to dismiss Parikh's complaint. For the following reasons, the motion is granted to the extent that the Defendant is granted summary judgment dismissing Parikh's complaint.

I. Factual Background and Procedural History

The Accident occurred on 110th Street at or near the intersection of 65th Avenue in Queens, New York. The plaintiff Jagdishkumar R. Shere ("Shere"), a pedestrian, alleges that he sustained bodily injuries when he was struck by the vehicle operated by the decedent, Perry Ecker ("Ecker")

Parikh was not struck by Ecker's vehicle. Parikh presents a derivative claim, alleging as follows:

TWENTY-FIRST: Plaintiff, PRADIP PARIKH, was deprived and will continue to be deprived of tangible services as a result of the injuries sustained by Plaintiff, JAGDISHKUMAR R. SHERE, to which he was legally entitled, as a result of the negligent actions of the Defendant herein resulting in his economic injury.

TWENTY-SECOND: Plaintiff, PRADIP PARIKH suffered economic expense

as a result of the injuries of JAGDISHKUMAR R. SHERE claimed hereinabove.

TWENTY-THIRD: Plaintiff, PRADIP PARIKH suffered loss of income as a result of the injuries of JAGDISHKUMAR R. SHERE claimed hereinabove.

In relevant part to the consideration of this motion, Shere testified as follows at his deposition: that he lives alone; that he knows Parikh; that Parikh helps him “do paperwork”; that he and Parikh are not related by either blood or marriage; that Parikh is a “just a friend”; and that he sees Shere every 3-4 months.

Parikh testified in relevant part to the consideration of this motion as follows: that Shere is a neighbor; that he and Shere are not related; that he and Shere do not have either a familial or legal relationship; that the damages he is claiming represent monies that he has paid for Shere’s rent and groceries; and that Shere asks him for money because “he [Shere] is financially totally broke.”

II. Discussion

The familiar principles applicable to summary judgment motions are set forth below.

The “function of summary judgment is issue finding, not issue determination” (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the “drastic” remedy of summary judgment, the movant “must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

If the moving party meets its burden, the burden then shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

To the extent that Parikh advances a loss of consortium claim, the law is settled that such a claim applies to married persons. “Consortium represents the marital partners' interest in the continuance of the marital relationship as it existed at its inception ..., not upon some guarantee that the martial partners are free of any preexisting latent injuries ...” *Anderson v Eli Lilly & Co.*,

79 NY2d 797, 798 [1991] [citations omitted]). Loss of consortium includes, *inter alia*, loss of support or services, elements of love, companionship, affection, society, sexual relations and solace (see *Millington v Southeastern Elevator Co.*, 22 NY2d 498 [1968]).

A claim for marital consortium may not be maintained unless the parties are married and the tortious conduct and resultant injuries occurred after marriage (see *Anderson v Eli Lilly & Co.*, 79 NY2d 797; *Cliquennoi v Michaels Group*, 178 AD2d 839 [3rd Dept 1991]; *Lesocovich v 180 Madison Ave. Corp.*, 165 AD2d 963 [3rd Dept 1990]; *Briggs v Butterfield Mem. Hosp.*, 104 AD2d 626 [2d Dept 1984]). Here, Shere and Parikh were never married. The loss of consortium claim is thus dismissed (see *Anderson v Eli Lilly & Co.*, 79 NY2d 797; *Cliquennoi v Michaels Group*, 178 AD2d 839; *Lesocovich v 180 Madison Ave. Corp.*, 165 AD2d 963; *Briggs v Butterfield Mem. Hosp.*, 104 AD2d 626).

In light of the absence of a familial relationship between Shere and Parikh, there is also no valid claim for loss of services of a child (see *Gilbert v Stanton Brewery*, 295 NY 270 [1946]).

Parikh’s opposition is utterly baseless. He concedes that neither a marital nor a familial relationship exists between him and Shere. On the law, Parikh fails to cite a single case that in any manner supports a right of recovery.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the motion is granted to the extent that the Defendant is accorded summary judgment dismissing Parikh’s complaint; and it is further,

ORDERED, that the caption of this cause is hereby amended to read as follows and that the Clerk of the Court shall note his or her records accordingly:

-----X
JAGDISHKUMAR R. SHERE,

Plaintiff,

Index No. 706353/2020

-against-

LOIS M. ROSENBLATT, ESQ., Public Administrator of
Queens County as Administrator of the Estate of JACK
PERRY ECKER, Deceased,

Defendant.

-----X
; and it is further,

ORDERED, that the Defendant shall serve a copy of this Order with Notice of Entry upon the attorneys for Shere and Parikh, the Clerk of the Court and the Queens County Clerk by August

16, 2023.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
June 20, 2023



MOJGAN C. LANCMAN, J.S.C.

FILED

6/21/2023 *gf*

COUNTY CLERK
QUEENS COUNTY