

Manning v Jackson
2023 NY Slip Op 35205(U)
September 5, 2023
Supreme Court, Bronx County
Docket Number: Index No. 801526/2022E
Judge: Bianka Perez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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KAREEN MANNING and SHAMEKA SMALLS,

Index No. 801526/2022E

Plaintiffs

-against-

Hon. BIANKA PEREZ

Justice Supreme Court

ROBERT JACKON, MATEO ABAD, and J & M
 LEASING LLC,

Defendants.

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The following papers (**Seq 1**) were read on this motion submitted on **June 6, 2023**.

Notice of Motion - Exhibits and Affidavits Annexed	NYSCEF No(s). 8-16
Answering Affidavits- Exhibits	NYSCEF No(s). 23-24
Replying Affidavit and Exhibits	NYSCEF No(s). 25

Upon the foregoing papers, defendants Mateo Abad and J & M Leasing LLC move for summary judgment on the issue of liability against co-defendant Robert Jackson and dismissal of Plaintiff Shameka Smalls' complaint against them as a matter of res judicata. Co-defendant, Robert Jackson, submits opposition on the issue of liability.

Plaintiffs Kareen Manning and Shameka Smalls commenced this action to recover for injuries allegedly sustained in a motor vehicle accident that occurred on January 18, 2018, on Boston Road in the County of Bronx, New York. In another related action, *Shameka Smalls, v JEM Leasing, LLC, et al.*, Index No: 21744/2019E, all parties stipulated to discontinue the action with prejudice. Defendants Mateo Abad and J & M Leasing LLC now move to dismiss this complaint as to Shameka Smalls as a matter of *res judicata*.

Summary Judgment on the Issue of Liability

When deciding a summary judgment motion, the court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth Century-*

Fox Film Corp., 3 NY2d 395, 404 [1957]). The court views the evidence in the light most favorable to the nonmoving party and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]). Summary judgment is the procedural equivalent of a trial. (*Mendoza v Highpoint Associates, IX, LLC*, 83 AD3d 1 [1st Dept 2011]). It is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. See (*Rotuba Extruders Inc., v Ceppos*, 46 NY2d 223 [1978]). The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, presenting sufficient evidence, in admissible form, to eliminate any material issues of fact from the case. (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *Winegrad, supra* at 853.

Generally, negligence cases do not lend themselves to resolution by a motion for summary judgment unless the facts clearly demonstrate the negligence of one party without any culpable conduct by the other. (*Barnes v Lee*, 158 AD2d 414 [1st Dept 1990]). Furthermore when issue of credibility are presented by conflicting testimony, a motion for summary judgment should not be granted (*Communications & Entertainment Corp. v Hibbard Brown & Co., Inc.*, 202 AD2d 191 [1st Dept 1994]), or where there is any doubt as to the existence of a material and triable issue of fact, summary judgment should not be granted (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]).

In support of their motion, defendants Mateo Abad and J & M Leasing LLC submit Mateo Abad affidavit stating he was stopped at a stop sign when he was rear ended by a co-defendant Robert Jackson's vehicle. Co-defendants Mateo Abad and J & M Leasing LLC established a prima facie entitlement to summary judgment, shifting the burden to co-defendant Robert Jackson.

In opposition, co-defendant Robert Jackson, submitted an affidavit stating his vehicle was completely stopped when the vehicle directly in front of him, driving by co-defendant Mateo Abad, backed up without warning. Viewing the record in the light most favorable to the non-moving parties, there remain questions of fact as to key elements of the accident, which turn on the credibility of the parties. These questions of fact and credibility which are the sole province of a

jury and may not be resolved by the motion court. (*Martinez v. 281 Broadway Holdings, LLC*, 183 A.D.3d 716, 719 [2nd Dept 2020]).

Summary Judgment on the Issue of Res Judicata

Res judicata, or claim preclusion, bars re-litigation of claims “where a judgment on the merits exists from a prior action between the same parties involving the same subject matter” (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). “[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*Xiao Yang Chen v Fischer*, 6 NY3d 94 [2005], quoting *O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). “[A] stipulation of discontinuance with prejudice has the same preclusive effect as a judgment on the merits.” (*Schwartzreich v. E.P.C. Carting Co., Inc.*, 246 AD2d 439, 441 [1st Dept 1998]). Res judicata precludes re-litigation of all claims which were raised, or could have been raised, in the prior action (see *Xiao Yang Chen v Fischer*, 6 NY3d at 100; *Cypress Hills Cemetery v City of New York*, 67 AD3d 853, 854 [2009], leave to appeal denied 14 NY3d 712[2010]). The primary purposes of res judicata are grounded in public policy concerns and are intended to ensure finality, prevent vexatious litigation and promote judicial economy (see *Matter of Hodes v Axelrod*, 70 NY2d 364, 372 [1987]; *Matter of Reilly v Reid*, 45 NY2d 24, 28 [1978]).

Here, defendants Mateo Abad and J & M Leasing LLC have established a prima facie case that there was a prior proceeding where the identical claims were brought or could have been brought, and the action was discontinued with prejudice. Plaintiff does not oppose. Therefore, the complaint is dismissed as to claims brought by Shameka Smalls.

Accordingly, it is hereby,

ORDERED, that defendants’ Mateo Abad and J & M Leasing LLC’s motion for summary judgment as to liability is denied; and it is further

ORDERED, that defendants’ Mateo Abad and J & M Leasing LLC’s motion to dismiss the claims brought by Shameka Smalls is granted on *res judicata* grounds; and it is further

ORDERED, that the Clerk of the Court shall enter judgment accordingly.

This constitutes the Decision and Order of this Court.

Dated: September 5, 2023

Hon. _____



BIANKA PEREZ, J.S.C.

1. CHECK
ONE.....

☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE

2.
MOTION.....

☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF
APPROPRIATE.....

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE
APPEARANCE