

Jones v Rodriguez-Lopez
2017 NY Slip Op 30922(U)
April 11, 2017
Supreme Court, Bronx County
Docket Number: 20912/2013
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX



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Georgia Jones ,

Decision and Order

Plaintiff

Index No. 20912/2013

-against-

J. Rodriguez-Lopez,

Defendant

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J. Rodriguez-Lopez,

Third-Party Plaintiff

Third Party Index No.
83932/2013

-against-

Milton Jones,

Third-Party Defendant

Howard H. Sherman
JSC

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The following papers numbered 1-3 read on motion by third-party defendant for summary judgment dismissing the third-party complaint

- Notice of Motion , Affirmation , Exhibits A-D 1
- Affirmation in Opposition 2
- Affidavit of Plaintiff's Counsel 3

Facts and Procedural Background

Plaintiff Georgia Jones seek recovery for personal injuries alleged to have been sustained in a two-vehicle collision that occurred on September 22, 2012 , on Fordham Road, , Bronx, New York. At the time , plaintiff was a back-seat passenger in a motor vehicle operated by her husband, Milton Jones that was stopped in the middle of the block waiting for a parking spot when it was impacted from the rear by a vehicle owned by J.

Rodriguez-Lopez (Rodriguez-Lopez).

Rodriguez-Lopez commenced a third-party action against Milton Jones in July 2013, asserting that the accident was caused solely by the negligence of Jones in the operation of his vehicle.¹

The Note of Issue was filed on July 27, 2015.

Motion

Milton Jones now moves for an order pursuant to CPLR 3212 granting summary judgment dismissing the third-party complaint on the grounds that there is no evidence to raise an issue of fact of his contributory negligence. He submits in support, copies of the pleadings [Exhibit A], and of the transcripts of the examinations before trial testimony of the parties [Exhibits B-D].²

Rodriguez-Lopez submits the affirmation of counsel in limited opposition to the extent the court would render a decision incorporating a determination as to his liability for the accident. Plaintiff also submits an affidavit of counsel stating that there is no opposition to the motion, but noting that the main action would not be affected by any determination on the third-party claim.

¹Rodriguez-Lopez testified that while he owned the vehicle, he was not driving it at the time of the accident, nor did he ever give permission to anyone to borrow it [11-15].

² The copies of the transcripts are certified by the court reporter, and their accuracy is unchallenged (see, *Ying Choy Chong v 457 W. 22nd St. Tenants Corp.* 144 A.D.3d 591, 42 N.Y.S.3d 116 [1st Dept. 2016]).

Discussion and Conclusions

While summary judgment is "is rarely granted in negligence cases since the very question of whether a defendant's conduct amounts to negligence is inherently a question for the trier of fact in all but the most egregious instances (Wilson v. Sponable, 81 AD2d 1, 5; Siegel, Practice Commentaries, McKinney's Cons Laws of NY Book 7B, CPLR C3212:8, p. 430) " Johannsdottir v. Kohn, 90 AD2d 842, 456 N.Y.S.2d 86 [2d Dept. 1982] , such a motion will be granted "where the facts clearly point to the negligence of one party without any fault or culpable conduct by the other party." (Morowitz v. Naughton , 150 AD2d 536 [2d Dept. 1989]; see also, Gramble v. Precision Health, Inc., 267 AD2d 66,67 , 699 N.Y.S.2d 393 [1st Dept. 1999]; Spence v. Lake Service Station, Inc., 13 AD 3d 276, 788 N.Y.S.2d 337 [1st Dept. 2004]).

Upon review of the moving papers and consideration of the applicable law, it is the finding of this court that the third-party defendant has demonstrated as matter of law that the collision with his stopped vehicle was neither caused nor contributed to by any culpable conduct on his behalf.

In opposition , no evidence is submitted to raise an issue of fact to rebut this prima facie showing.

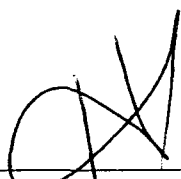
Accordingly, it is

ORDERED that the motion be and hereby is granted, and it is further

ORDERED that summary judgment be entered in favor of MILTON JONES as against J. RODRIGUEZ-LOPEZ dismissing the third-party complaint in its entirety .

This shall constitute the decision and order of this court.

Dated: April 11, 2017



Howard H. Sherman