

**Hidalgo v Gonzalez**

2018 NY Slip Op 33427(U)

December 20, 2018

Supreme Court, Kings County

Docket Number: 516371/2016

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20<sup>th</sup> day of December, 2018.

PRESENT:

HON. CARL J. LANDICINO,  
Justice.

-----X  
KARINA HIDALGO and LEONIDAS ABREU,  
*Plaintiffs,*

Index No.: 516371/2016

- against -

DECISION AND ORDER

ALBERT GONZALEZ, JOSE F. REYES BURGOS,  
ALBA LIMO TRANSPORTATION CORP. and ALEX  
GABRIEL PAULINO ROMERO,  
*Defendants.*

Motion Sequence #4  
Action No. 1

-----X  
JOSE REYES BURGOS, ELIAS DISLA, YUBERKIS  
CABRAL and THOMAS NUNEZ PLACENCIA,  
*Plaintiffs,*

Index No.: 515985/2016

- against -

DECISION AND ORDER

ALBA LIMO TRANSPORTATION CORP. and  
ALEX GABRIEL PAULINO,  
*Defendants.*

Motion Sequence #3  
Action No. 2

-----X

**Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:**

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	<u>1/2, 3/4</u>
Opposing Affidavits (Affirmations).....	<u>5, 6, 7,</u>
Reply Affidavits (Affirmations).....	<u>8, 9</u>

After a review of the papers and after oral argument the Court determines as follows:

This action concerns a motor vehicle accident that occurred on May 1, 2016.<sup>1</sup> On that day, the Plaintiffs Karina Hidalgo and Leonidas Abreu (hereinafter the "Plaintiffs") were passengers in a taxi cab operated by Defendant Alex Gabriel Paulino Romero and owned by Defendant Alba Limo Transportation Corp. (hereinafter the "Alba Defendants") which was involved in a motor

<sup>1</sup> On May 31, 2017, this Court issued an Order joining these two matters for trial.

vehicle accident with a vehicle operated by Defendant Jose Reyes Burgos and owned by Defendant Albert Gonzalez (hereinafter the “Burgos Defendants”). The Plaintiffs allege that the incident took place shortly after the taxi owned and operated by the Alba Defendants exited a parking lot and collided with the Burgos Defendants’ vehicle on 84<sup>th</sup> Street at or near its intersection with Atlantic Avenue, in Queens County, New York.

The Burgos Defendants now move for summary judgment (motion sequence #4) on the issue of liability.<sup>2</sup> The Burgos Defendants contend (See Burgos Defendants’ Motion, Affirmation, Paragraph 5) that the “accident occurred when the taxi operated by co-defendant, Alex Gabriel Paulino Romero, failed to yield the right-of-way, in violation of Vehicle and Traffic Law (VTL) §1143, when exiting the CVS parking lot, to the vehicle operated by defendant, Jose Reyes Burgos, who was traveling straight on 84<sup>th</sup> Street.” What is more, the Burgos Defendants argue that the fact that the right front door of the Alba Defendants’ vehicle was in contact with the front left portion of the Burgos Defendants’ vehicle is proof that the Alba Defendants vehicle failed to yield the right-of-way to the Burgos Defendants, in violation of VTL §1143.

Both the Alba Defendants and Plaintiff Abreu oppose the motion and argue that it should be denied. Plaintiff Abreau contends that the Burgos Defendants have not met their *prima facie* burden given that neither Plaintiff witnessed the impact. The Alba Defendants oppose the motion and argue that the affidavit of Defendant Alex Gabriel Paulino Romero suggests that he was not engaged in a collision while exiting the parking lot but instead was himself hit by the Burgos Defendants’ vehicle, while he was stopped at a traffic signal.

It has long been established that “[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it ‘should only be employed when there is no doubt as to the

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<sup>2</sup> Jose Reyes Burgos also moves (motion sequence #3) separately and individually as part of action number 2 (Index Number 515985/2016) wherein he is a Plaintiff, for the same relief. The two motions will be treated together for the remainder of this Decision and Order.

absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493 [2<sup>nd</sup> Dept, 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2<sup>nd</sup> Dept, 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2<sup>nd</sup> Dept, 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2<sup>nd</sup> Dept, 2006]; see *Menzel v. Plotnick*, 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2<sup>nd</sup> Dept, 1994].

Turning to the merits of the motion (motion sequence #4) by the Burgos Defendants, the Court finds that the movants have provided sufficient evidence to establish their *prima facie* burden. In support of their motion, the Burgos Defendants rely on the deposition testimony of Plaintiff Karina Hidalgo, the deposition testimony of Plaintiff Leonidas Abreu, the deposition testimony of Defendant Jose Reyes Burgos, the deposition of Elias Disla (a Plaintiff in action number 2), and the deposition of Thomas Nunez Placencia (a Plaintiff in action number 2). In her deposition, Plaintiff Karina Hidalgo was asked (Burgos Defendants’ Motion, Exhibit E, Page 20) if the accident occurred when the cab she was a passenger in was exiting the parking lot and

entering 84<sup>th</sup> Street and she answered “[y]es.” When Defendant Burgos was asked (Burgos Defendants Motion, Exhibit G, Page 28) where the other vehicle made contact with his car, he answered “[o]n the left front side.” When he was asked where the other car was contacted by his car, Defendant Burgos answered, “[t]he right front door.” This testimony, taken together, shows that the Burgos Defendants have met their *prima facie* burden in as much as it shows that the Alba Defendant vehicle was in violation of VTL §1143 and as a result the sole proximate cause of the accident. This is because VTL §1143 provides that “[a] driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield to the driver with the right-of-way.” *Bonilla v. Calabria*, 80 A.D.3d 720, 720, 915 N.Y.S.2d 615, 616 [2<sup>nd</sup> Dept, 2011].

In opposition to the motion, the Alba Defendants and Plaintiff Abreu have raised a material issue of fact that prevents this Court from granting the instant motion. The opponents of the motion point to the Affidavit provided by Defendant Alex Paulino Romero who states that the accident between the two vehicles occurred after he had turned onto 84<sup>th</sup> Street. In his Affidavit Defendant Alex Paulino Romero states (Affirmation in Opposition, Exhibit A) that “I waiting [sic] and stopped by the red light, a car came out of nowhere on 84<sup>th</sup> St., from behind me and hit into my car.” He continues and states that “I was waiting by the red light for at least 10-15 seconds before my car was hit.” In view of Romero’s testimony that the Burgos vehicle struck his vehicle while he was stopped and waiting for the traffic light on 84<sup>th</sup> Street there is a triable issue of fact as to who negligently caused or contributed to the accident. *See Kertesz v. Jason Transp. Corp.*, 102 A.D.3d 658, 659, 957 N.Y.S.2d 730, 732 [2<sup>nd</sup> Dept, 2013].

Based upon the foregoing, it is hereby ORDERED as follows:

The Burgos Defendants motion (motion sequence #4 in Action No. 1) is denied.

The motion by Plaintiff Burgos (motion sequence #3 in Action No. 2) is also denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:




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**Carl J. Landicino**  
J.S.C.

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