

Imbesi v Yang

2018 NY Slip Op 32179(U)

September 5, 2018

Supreme Court, New York County

Docket Number: 158962/2013

Judge: Adam Silvera

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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. ADAM SILVERA PART IAS MOTION 22
Justice
LORI IMBESI, Plaintiff,
- v -
HUANG YANG, MESHI BESNIK, PARK JIB Defendant.
INDEX NO. 158962/2013
MOTION DATE 05/16/2018, 05/16/2018, 05/16/2018
MOTION SEQ. NO. 001 002 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 63, 65, 66, 69, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 122

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 67, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 115, 116, 123

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 117, 118, 119, 120 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that defendant Park Ung Jib's motion for summary judgment (mot. seq. no. 001), defendant Meshi Besnik's motion for summary judgment (mot. seq. no. 002), and defendant Park Ung Jib's threshold motion for summary judgment (mot. seq. no. 004) are decided herein. Plaintiff opposes all 3 motions, and defendants Jib and Besnik reply respectively.

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 New York University Medical Center, 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 City of New York*, 49 NY2d 557, 560 (1980).

Defendant Jibs filed two motions for summary judgment to dismiss the complaint. In mot. seq. no. 001, defendant Jibs argues that her vehicle was stopped at a light when it was hit in the rear by defendant Besnik’s vehicle in this three car accident, such that she is not liable for any injuries plaintiff may have sustained in the accident. In mot. seq. no. 004, defendant Jibs also moves for summary judgment on the ground that plaintiff Lori Imbesi failed to show that she sustained a serious injury pursuant to Insurance Law §5102(d). Defendant Besnik’s motion for summary judgment, mot. seq. no. 002, alleges that his car was stopped when it was hit in the rear by the vehicle operated by defendant Huang Yang, such that he is not liable for any injuries plaintiff may have sustained in the accident. Defendant Besnik also alleges that plaintiff failed to meet the threshold of serious injury pursuant to Insurance Law §5102(d).

The facts herein are largely uncontested. Here, plaintiff was a passenger in a car service vehicle driven by defendant Huang Yang. On the date and time of the accident, defendant Yang’s vehicle rear ended defendant Besnik’s vehicle while it was stopped, and pushed defendant Besnik’s vehicle forward into the rear of defendant Jib’s vehicle which was stopped at a traffic light. Thus, both defendant Besnik and defendant Jib have made out a prima facie case of negligence, and the burden shifts to plaintiff to raise a triable issue of fact. *See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). “[A] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ... [and] shift[s] the burden to [the non-moving party] to come forward with an adequate nonnegligent explanation for the accident”. *Cruz v Lise*, 123 AD3d 514 (1st Dep’t

2014)(internal quotations omitted). Here, plaintiff fails to raise any issues of fact. In fact, in opposition, plaintiff concedes that defendant Yang “is at fault for the negligent operation and maintenance of his vehicle which was a proximate cause of the accident and plaintiff’s subsequent injuries.” Affirmation in Opposition, ¶9. Plaintiff’s opposition papers are wholly silent as to how defendants Jib and Besnik are liable to her for any injuries she sustained in the accident. As no issues of fact exist, both defendants Jib and Besnik’s motions for summary judgment are granted and this action is dismissed as against them. Defendant Jib’s motion threshold summary judgment motion is denied as moot, as the Court has already determined that this action is dismissed as against her.

Accordingly, it is

ORDERED that defendant Park Ung Jib’s motion for summary judgment (mot. seq. no. 001) to dismiss this action as against her is granted and this action is dismissed as to defendant Park Ung Jib; and it is further

ORDERED that defendant Meshi Besnik’s motion for summary judgment (mot. seq. no. 002) to dismiss this action as against him is granted and this action is dismissed as to defendant Meshi Besnik; and it is further

ORDERED that defendant Park Ung Jib’s threshold summary judgment motion (mot. seq. no. 004) to dismiss this action is denied as moot; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants Park Ung Jib and Meshi Besnik dismissing the claims and cross-claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that within 30 days of entry, defendant Park Ung Jib shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

9/5/2018
DATE


ADAM SILVERA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLER ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE