

Quiles-Martinez v Biella
2018 NY Slip Op 33883(U)
January 2, 2018
Supreme Court, Orange County
Docket Number: EF007812-2017
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
NANETTE QUILES-MARTINEZ,

Plaintiff,

-against-

MARIA BIELLA, JEFFREY E. BARTFELD and
LOUIS F. HALL,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF007812-2017

Motion Date: December 22, 2017

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The following papers numbered 1 to 5 were read on defendant Maria Biella's motion to
dismiss Plaintiff's claim for property damage:

Notice of Motion - Affirmation / Exhibits	1-2
Affirmation in Opposition / Exhibits - Affidavit	3-4
Reply Affirmation	5

Upon the foregoing papers it is ORDERED that the matter is disposed of as follows:

This is an action wherein plaintiff Nanette Quiles-Martinez seeks to recover for personal
injury and property damage arising out of a motor vehicle accident that occurred on January 18,
2015 in the Town of Clarkstown, New York. The Complaint, bearing Ms. Quiles-Martinez'
sworn verification, alleges *inter alia*:

14. That at all times hereinafter mentioned, the plaintiff was the operator of a 2010 Cadillac motor vehicle, bearing License Plate #GNF1090, owned by one Roberto Quiles-Martinez, who is not a party hereto.
15. That at all times hereinafter mentioned, this plaintiff operated the aforementioned 2010 Cadillac motor vehicle with the express and/or implied permission, consent and knowledge of the aforesaid owner.

Each of these allegations is, in Paragraph "24" of the Complaint, repeated, reiterated and realleged in Ms. Quiles-Martinez' cause of action for property damage, wherein she alleges that as a result of Defendants' negligence she "sustained property damage to her motor vehicle."

Defendant moves pursuant to CPLR §3211(a)(3) to dismiss Plaintiff's cause of action for property damage to the vehicle on the ground that she is not the owner of the vehicle. CPLR §3211(a)(3) provides that "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that the party asserting the cause of action has not legal capacity to sue." Capacity and standing are "related, but distinguishable, legal concepts," each of which may be challenged on a motion to dismiss under Section 3211(a)(3). *See, Wells Fargo Bank Minnesota, Nat. Ass'n v Mastropaolo*, 42 AD3d 239, 242-243 (2d Dept 2007). At issue here is Plaintiff's standing, which requires an inquiry into whether the litigant has "an interest in the claim at issue in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant's request." *Id.* (quoting *Caprer v. Nussbaum*, 36 AD3d 176, 182).

Plaintiff does not deny that a claim for property damage to a vehicle damaged in an accident must be brought by the "owner" of the vehicle. In opposition to Defendant's motion, she has submitted an affidavit stating that Roberto Quiles-Martinez (the non-party referenced in Paragraph "14" of the Verified Complaint) is her husband, and that he purchased the vehicle in question for her as a gift. Roberto Quiles-Martinez, the registered owner of the vehicle, has

himself submitted no affidavit. Moreover, Plaintiff has not proffered the vehicle's Certificate of Title, which would constitute prima facie evidence of its ownership. *See*, VTL §2108(c).

Plaintiff's unsubstantiated affidavit flies in the face of her sworn allegations in the Verified Complaint, which are formal judicial admissions and conclusive of the facts thereby admitted. *See, Zegarowicz v. Ripatti*, 77 AD3d 650 (2d Dept. 2010). As the Second Department therein held:

Facts admitted by a party's pleadings constitute formal judicial admissions (*see Falkowski v. 81 & 3 of Watertown*, 288 AD2d 890, 891...; *Prince, Richardson on Evidence* §8-215, at 523-524 [Farrell 11th ed.]). Formal judicial admissions are conclusive of the facts admitted in the action in which they are made (*see Coffin v. Grand Rapids Hydraulic Co.*, 136 NY 655...).

Zegarowicz, supra, 77 AD3d at 653. Plaintiff explicitly admitted not only that the vehicle was owned by Roberto Quiles-Martinez, but also that she was operating it with his permission (Verified Complaint ¶¶ 14-15), which is utterly irreconcilable with her belated assertion of ownership. Plaintiff's vague reference to "her" vehicle in the cause of action for property damage cannot be deemed an allegation of ownership, because Plaintiff in that cause of action explicitly repeated, reiterated and realleged that Roberto Quiles-Martinez owned the vehicle and that she was operating it with his permission (Complaint ¶24).

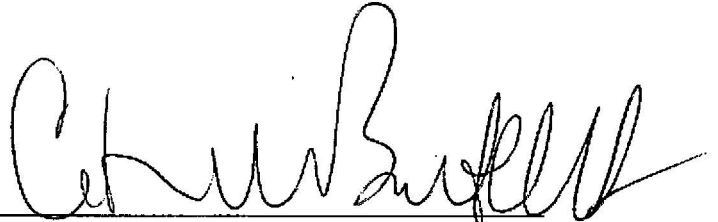
The court therefore concludes that Plaintiff's affidavit in opposition to Defendant's motion is insufficient as a matter of law to overcome the sworn formal judicial admissions of Roberto Quiles-Martinez's ownership of the vehicle in question. Consequently, Plaintiff's cause of action for property damage to that vehicle must be dismissed for lack of standing.

It is therefore

ORDERED, that Defendant Maria Biella's motion to dismiss is granted, and the Second Cause of Action in Plaintiff's Verified Complaint is hereby dismissed.

The foregoing constitutes the decision and order of this court.

Dated: January 2, 2018 ENTER
Goshen, New York



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE