

Hobson v Raza

2019 NY Slip Op 33211(U)

October 28, 2019

Supreme Court, New York County

Docket Number: 150577/2014

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

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INDEX NO. 150577/2014

DAPHNE HOBSON, RICHARD HOBSON,
Plaintiff,

MOTION DATE 05/30/2019

MOTION SEQ. NO. 002

- v -

BAQIR RAZA, JAFAR RAZA, THE METROPOLITAN
MUSEUM OF ART, RC DOLNER LLC

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ORDERED that defendants The Metropolitan Museum of
Art (hereinafter, "The Met") and RC Dolner LLC (hereinafter, "RC") motion for summary
judgment for an Order dismissing with prejudice all claims and cross-claims asserted against said
defendants is granted.

This case arises from a motor vehicle accident which occurred on March 6, 2013, at the
southeast corner of Fifth Avenue and East 81st Street in the County, City, and State of New York
when plaintiffs exited the Metropolitan Museum of Art through a construction tunnel and
proceeded to cross the street where they were struck by a vehicle operated by defendant Baqir
Raza and owned by Jafar Raza.

"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]).

Here, defendants The Met and RC allege that the accident did not occur on the Metropolitan Museum of Art’s premises and that defendants did not control the actions of plaintiffs nor the Raza co-defendants which led to the underlying accident. Defendants aver that they had no duty to plaintiffs and that “[a]bsent a duty running directly to the injured [party] there can be no liability in damages, however careless the conduct or foreseeable the harm” (*Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 466 [1st Dept 2016] quoting *Madison Ave Gourmet Foods v Finlandia Ctr.*, 96NY2d 280, 289 [2001]). Defendants successfully argue that defendants The Met and RC did not owe a duty to pedestrian plaintiffs when they had crossed the street in the middle of Fifth Avenue at the time of the accident. While defendants may have owed a duty to plaintiffs prior to the accident during their sojourn at The Metropolitan Museum of Art, that duty terminated once plaintiffs left the premises.

In support of their motion defendants attach the Verified Bill of Particulars, the deposition of plaintiff Daphne Hobson, the deposition of plaintiff Richard Hobson, the deposition of defendant Baqir Raza, surveillance video from north of the accident location on Fifth Avenue, and images from the surveillance video (Mot, Exh C, D, E, F, H, I). Plaintiff Daphene Hobson testified at her deposition that she crossed the street “across from the museum” (Mot, Exh D at 37). According to plaintiffs’ Verified Bill of Particulars, plaintiff Daphne Hobson, “was caused to be violently struck and seriously injured by the Raza defendants’ livery vehicle when she was lawfully and carefully walking across 5th Avenue, within the crosswalk” (Exh C, ¶ 5). Plaintiffs’ Bill of Particulars concedes that plaintiff Daphne Hobson had left the

premises of The Metropolitan Museum of Art and was in the crosswalk when the accident occurred. The surveillance video and images of the video depict both plaintiffs crossing the third traffic lane, which is free of any construction obstructions, in the street on Fifth Avenue when they are struck by a left turning taxi cab (Mot, Exh H & I). As such, defendants The Met and RC have made a prima facie showing of entitlement to summary judgment to dismiss the case as against said defendants on the basis that defendants The Met and RC did not owe plaintiffs any duty once plaintiffs left the premises of The Metropolitan Museum of Art and the burden shifts to plaintiffs to raise an issue of fact.

In opposition, plaintiffs argue that The Met effectively exercised control and special use of Fifth Avenue for its special event on the date of the accident. Plaintiffs aver that the passageway that plaintiffs exited from into the intersection was owned, controlled and made special use by The Met. Plaintiffs further allege that The Met had put personnel outside of Fifth Avenue to guide pedestrians coming in and out of the event but that said personnel failed to assist plaintiffs. Plaintiffs assertions however are belied by the parties' depositions, video and photo evidence of the accident at issue which demonstrate that the accident occurred once plaintiffs exited The Met property and entered into a public roadway. Thus, plaintiffs have failed to demonstrate that defendants The Met and RC owed a duty to plaintiffs and defendants' motion for summary judgment for an Order dismissing with prejudice all claims and cross-claims asserted against said defendants is granted.

Accordingly, it is

ORDERED that the motion of defendants The Metropolitan Museum of Art and RC Dolner LLC, for an order that defendants bears no liability for the alleged occurrence is granted; and it is further

ORDERED that the complaint is dismissed in its entirety against defendants The Metropolitan Museum of Art and RC Dolner LLC, with costs and disbursement to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption read as follows:

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 DAPHNE HOBSON, RICHARD HOBSON

 Plaintiffs,
 -against- Index No. 150577/2014

 BAQIR RAZA, JAFAR RAZA
 Defendants
 -----X

and it is further;

ORDERED that within 30 days of entry, counsel for defendants The Metropolitan Museum of Art and RC Dolner LLC serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

10/28/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

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|-------------------------------------|---|-------------------------------------|--------------------------------|
| <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART |
| | <input type="checkbox"/> DENIED | <input type="checkbox"/> | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | <input type="checkbox"/> | REFERENCE |