

Bascombe v Esack

2019 NY Slip Op 34492(U)

February 5, 2019

Supreme Court, Westchester County

Docket Number: Index No. 55889/2018

Judge: Linda S. Jamieson

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NYSCEF DOC. NO. 29

Disp _____ Dec x Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON
-----X
LORETA BASCOMBE,

Plaintiff,

-against-

Index No. 55889/2018

DECISION AND ORDER

ANGELA ESACK, DOMINIC STEELE and
AMERICAN UNITED TRANSPORTATION INC.,

Defendants.

-----X

The following papers numbered 1 to 4 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit, Affirmation and Exhibits	1
Affirmation in Opposition	2
Affidavit, Affirmation and Exhibits in Opposition ¹	3
Reply Affirmation	4

Defendant Esack brings her motion for summary judgment seeking to be dismissed from this car accident case. The facts are not in dispute. Esack was parked outside plaintiff's apartment building at the time of the accident, waiting for plaintiff to get into the car so they could get on their way to an event together. Plaintiff sat down initially, but then got

¹Exhibits must be tabbed. Counsel is directed to review the Part Rules.

[* 1]

out of the car, leaving the door open, so that she could adjust the seat. While she was standing there, defendant Steele hit Esack's car. The open door hit plaintiff and knocked her down. This establishes Esack's prima facie case. *Davis v. Quinones*, 295 A.D.2d 394, 394, 743 N.Y.S.2d 171, 172 (2d Dept. 2002) ("A rear-end collision with a stopped automobile creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on that operator to provide a non negligent explanation as to how the accident occurred. Conclusory allegations are insufficient to rebut the prima facie showing of negligence created by the unexplained rear-end collision.").

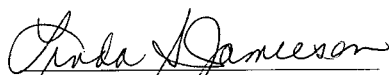
In response, Steele and American United Transportation Inc. offer nothing but a request for discovery, without suggesting what facts might be uncovered thereby. "The mere hope that evidence sufficient to defeat the motion may be uncovered during the discovery process is insufficient" to defeat a motion for summary judgment. *Spatola v. Gelco Corp.*, 5 A.D.3d 469, 470, 773 N.Y.S.2d 101, 102 (2d Dept. 2004). For her part, plaintiff suggests that defendant was parked illegally, arguing that there are thus questions of fact present. In support of her argument, she submits an exhibit of a photo of the street - which does not show any legible street sign prohibiting parking there. Even if there were a "No Parking" sign in front of the building, it would

not be illegal for defendant to have parked there, since VTL § 129 defines "No Parking" to allow for temporary standing for the purposes of the loading or unloading of merchandise or passengers. Moreover, a review of the certified police report demonstrates that the police officer who described the accident did not mention that Esack was parked illegally. Plaintiff's "mere speculation . . . without evidentiary support in the record, is insufficient to defeat a motion for summary judgment." *Mehring v. Cahill*, 271 A.D.2d 415, 415-16, 707 N.Y.S.2d 125, 127 (2d Dept. 2000). Accordingly, the motion is granted in its entirety, and defendant Esack is dismissed from the action.

The remaining parties are directed to appear for Preliminary Conference in the Preliminary Conference Part, Courtroom 800, on March 11, 2019 at 9:30 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
February 5, 2019


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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