

Mejia-Moran v Corrielus
2020 NY Slip Op 34550(U)
September 16, 2020
Supreme Court, Kings County
Docket Number: 500426/17
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of September 2020

HONORABLE FRANCOIS A. RIVERA

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CRISPIN MEJIA-MORAN and GERMAN MEJIA-MORAN,

Plaintiff,

DECISION & ORDER

Index No. 500426/17

- against -

JEAN K. CORRIELUS and TAKI GOOD TAXI, LLC,

Defendants.

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on August 20, 2019, under motion sequence number two, by plaintiffs Crispin Mejia-Moran and German Mejia-Moran (hereinafter the plaintiffs or the Morans) for an order: (1) precluding defendants, Jean K. Corrielus (hereinafter Corrielus) and Taki Good Taxi, LLC, Corp., (hereinafter Taki)(collectively as the defendants) for failing to appear for an examination before trial; or (2) in the alternative, upon preclusion, granting the plaintiffs summary judgment against the defendants on the issue of liability pursuant to CPLR 3212; and (3) striking the defendants' second and fourth affirmative defenses. The defendants oppose the motion.

- Notice of motion
- Affirmation in support
- Affirmation of good faith
- Exhibits A-I
- Opposition by the plaintiffs
- Exhibits A-C
- Affirmation in reply

BACKGROUND

On January 9, 2017, the Morans commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office.

The Morans' verified complaint and deposition testimony allege the following salient facts among others. On April 19, 2014, at 2:30 A.M., Corrielus was operating a livery car bearing license plate number 6V44A (hereinafter the defendants' vehicle) with the knowledge and permission and within the scope of his employment with Taki. On that date and time, the Morans were back seat passengers in the defendants' vehicle. Corrielus was driving on Amsterdam Avenue at or near its intersection with West 119th Street in New York County, State of New York. Corrielus collided with a parked vehicle bearing license plate number FDT9367, due to his negligent operation of the defendants' vehicle. The collision caused each of the Morans to sustain serious physical injury.

LAW AND APPLICATION

The relief requested in the Morans' notice of motion and in their counsel's affirmation in support state that they seek an order precluding the defendants for failing to appear for an examination before trial. CPLR 2214 (a) provides that a notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor (*Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2nd Dept 2018]). The Morans, however, did not explain what they are seeking to preclude. By their failure to explain what they were

seeking to preclude, their motion failed to comply with CPLR 2214 (a).

Assuming for the sake of argument that the Morans were seeking to preclude the defendants from offering evidence in defense of the action, the motion contains another procedural defect.

Uniform Court Rule § 202.7 provides that no motion relating to disclosure shall be filed with the court unless it is accompanied by an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion. Such affirmation must indicate the time, place and nature of the consultation and the issues discussed and any resolutions (*see* 22 NYCRR 202.7 [c]).

The affirmation of good faith submitted by the Morans consisted of two allegations of fact. The first allegation identified the affiant as counsel to the Morans. The second allegation of fact stated in sum and substance that the affiant attempted to resolve by agreement the outstanding discovery without the intervention of the Court and was unable to do so. The affirmation of good faith submitted by Morans' counsel does not satisfy 22 NYCRR 202.7 (c), as it did not refer to any communications between the parties that would evince a diligent effort by the Morans to resolve the present discovery dispute or indicating good cause why no such communications occurred (*Murphy v County of Suffolk*, 115 AD3d 820 [2nd Dept 2014], citing 22 NYCRR 202.7[c]; *Matter of Greenfield v Board of Assessment Review for Town of Babylon*, 106 AD3d 908 [2nd Dept 2013]). Accordingly, this branch of the Morans' motion should be denied.

The second branch of the Morans' motion states that upon preclusion, the Morans

should be granted summary judgment in their favor on the issue of liability. This branch of the motion is ambiguous because it is unclear whether the Morans are seeking summary judgment, in the alternative, if preclusion is denied or if they seek summary judgment, in the alternative, if preclusion is granted. The defendants' opposition papers demonstrate that they understood that the second branch of the motion was only triggered if the Court granted the Morans' preclusion request. The Court resolves the ambiguity in the manner that the defendants understood it. Consequently, the Court finds that this branch of the motion, as stated, is solely triggered if the Court grants the Morans' motion for preclusion. Inasmuch as the Court is denying the Morans request for preclusion, this branch of the Morans' motion is not reached.

The third branch of the Morans' motion seeks an order striking the second and third affirmative defenses for failing to appear for an examination before trial. As previously stated, the affirmation of good faith did not comply with 22 NYCRR 202.7(c). It should be denied on that basis. However, the same ambiguity applies to the third branch of the Morans' motion. Once again, the defendants understood that this branch was also only triggered by the Court granting preclusion in the first branch of the motion. Once again, the Court resolves the ambiguity in the manner that the defendants understood it. Consequently, the Court does not reach the third branch of the Morans' motion.

CONCLUSION

The motion by plaintiffs Crispin Mejia-Moran and German Mejia-Moran for an

order precluding defendants, Jean K. Corriellus and Taki Good Taxi, LLC, Corp for failing to appear for an examination before trial is denied.

The motion by plaintiffs Crispin Mejia-Moran and German Mejia-Moran for an order, upon preclusion, granting the plaintiffs summary judgment against the defendants on the issue of liability is not reached.

The motion by plaintiffs Crispin Mejia-Moran and German Mejia-Moran for an order, upon preclusion, striking the defendants' second and fourth affirmative defenses is not reached.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francisco A. Rivera

J.S.C.

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KINGS COUNTY CLERK
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