

Tejada v Giovinco

2020 NY Slip Op 34748(U)

January 27, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 613782/2018

Judge: George Nolan

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 613782/2018

Index No. 625546/2018

**SUPREME COURT – STATE OF NEW YORK
PART 55 - SUFFOLK COUNTY**

P R E S E N T:

Hon. George Nolan
Justice Supreme Court

ACTION #1 Index No. 613782/2018

TRINIDAD TEJADA,

Plaintiff,

-against-

DANIELLE GIOVINCO, CATHOLIC CHARITIES,
MARION AIKEN, V & M CONTRACTING, INC.,
and MARK BARBERA,

Defendants.

ACTION #2 Index No. 625546/2018

MARION AIKEN,

Plaintiff,

-against-

DANIELLE GIOVINCO, V& M CONTRACTING,
INC., MARK BARBERA and TRINIDAD TEJADA,

Defendants.

Action #1 Index No. 613782/2018

Mot. Seq. No. #002 - MD

Mot. Seq. No. #003 - MG

Orig. Return Date: 09/12/2019

Mot. Submit Date: 01/09/2020

Action #2 Index No. 625546/2018

Mot. Seq. No. #001 - MD

Orig. Return Date: 11/21/2019

Mot. Submit Date: 01/09/2020

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Upon the e-filed documents (Action #1) numbered 38 through 91, and upon due deliberation and consideration by the Court of the foregoing papers; and

Upon the e-filed documents (Action #2) numbered 14 through 36, and upon due deliberation and consideration by the Court of the foregoing papers; it is hereby

ORDERED that these motions are consolidated for consideration.

V&M Contracting and Mark Barbera, defendants in Action No. 1 and Action No. 2, move pursuant to CPLR 3212 for an order granting them summary judgment and dismissing the complaints of plaintiffs Trinidad Tejada and Marion Aiken and all cross-claims asserted against them (Action no. 1, motion sequence no. 002).

Danielle Giovinco, a defendant in Action No. 1 and Action No. 2, moves pursuant to CPLR 3212 for an order granting summary judgment on the issue of liability and dismissing the complaint of plaintiffs Trinidad Tejada and Marion Aiken and all cross-claims asserted against her (Action no. 1, motion sequence no. 003).

Trinidad Tejada, defendant in Action No. 2, moves pursuant to CPLR 3212 for an order dismissing the complaint of plaintiff Marion Aiken in Action No. 2 and all cross-claims against her on the ground that she bears no liability for the accident that is the subject of these actions (Action no. 2, motion sequence no. 001).

Upon consolidation of the foregoing papers is hereby

ORDERED that the motion of defendant Trinidad Tejada for summary judgment is denied; and it is further

ORDERED that the motion of defendants V&M Contracting, Inc. and Mark Barbera for summary judgement is denied; and it is further

ORDERED that upon the Court's own motion, motion sequence 003 filed under Action #1, Index No. 613782/2018 by defendant Danielle Giovinco shall also be deemed as having been filed under Action

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#2, Index No. 625546/2018 and accordingly; it is further

ORDERED that the motion of defendant Danielle Giovinco for summary judgment is granted and the complaints of plaintiffs Trinidad Tejada (Index No. 613782/2018) and Marion Aiken (Index No. 625546/2018) and all cross-claims asserted against her are dismissed.

This action arises out of a four vehicle accident that occurred on December 8, 2017 at the intersection of Carlton Avenue and Smith Street in Central Islip, New York. The intersection was governed by a traffic signal. The parties' submissions establish that Tejada was operating a vehicle westbound on Smith Street and Barbera was operating a van owned by V&M Contracting, Inc. (hereinafter "V&M") northbound on Carlton Avenue. Tejada and Barbera have each submitted an affidavit in which they claim to have entered the accident intersection with a green light. Their two vehicles collided in the intersection and the V&M van was pushed into a vehicle operated by Marion Aiken (plaintiff in Action No. 2 and defendant in Action No. 1), which was traveling southbound on Carlton Avenue. Aiken's vehicle was in turn pushed backwards into a vehicle that was traveling behind her, which was owned and operated by defendant Giovinco.

It is well settled that the proponent of a summary judgment motion bears the initial burden of establishing his or her entitlement to judgment, as a matter of law, in his or her favor by offering admissible evidence sufficient to eliminate any material issues of fact from the case (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition thereto (*Winegrad v. New York Univ. Med. Ctr.*, *supra*). Once the movant has made the requisite showing, the burden then shifts to the opposing party, requiring him or her to present admissible evidence and facts sufficient to require a trial on any issue of fact (CPLR 3212 [b]; *Alvarez v. Prospect Hosp.*, *supra*; *Zuckerman v. City of New York*, *supra*). On such a motion, the Court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the nonmoving party; the Court is not responsible for resolving issues of fact or determining matters of credibility (*see Chimbo v. Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v. Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v. Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v. Bolivar*, *supra*; *Benetatos v. Comerford*, 78 AD3d 730, 911 NYS2d 83 [2d Dept 2010]). A plaintiff may obtain partial summary judgment on the issue of liability without demonstrating the absence of his or her own comparative fault (*Rodriguez v. City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Poon v. Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]).

Clearly, the summary judgment motions of Tejada and Barbera/V&M must be denied as their conflicting affidavits create an issue of fact as to which driver entered the accident intersection against a red light.

Conversely, defendant Giovinco has established her prima facie entitlement to summary judgment by submitting an affidavit in which she states she was operating a Ford SUV southbound on Carlton Avenue and came to a stop for a red light at Smith Street behind a white van with the Catholic Charities insignia.

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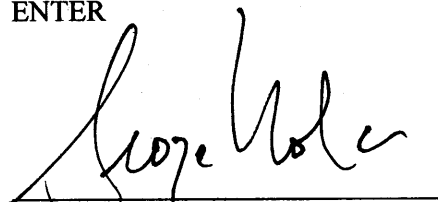
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She observed two vehicles collide in the intersection (she states that the V&M van traveling northbound on Carlton Avenue ran the red light). The V&M van struck the Catholic Charities van operated by Aiken and pushed that van backwards into Giovinco's vehicle.

Defendants Tejada, Barbera and V&M oppose Giovinco's motion but they submit no evidence to contradict Giovinco's account of the accident and fail to raise a triable issue of fact that would prevent the Court from granting Giovinco summary judgment.

The foregoing constitutes the decision and Order of the Court.

ENTER



HON. GEORGE NOLAN, J.S.C.

Date: January 27, 2020
Riverhead, New York

 FINAL DISPOSITION

 X NON-FINAL DISPOSITION