

Rodriguez v Almonte

2019 NY Slip Op 35143(U)

September 27, 2019

Supreme Court, Bronx County

Docket Number: Index No. 21432/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 14

-----X
RODRIGUEZ, EDWARD

Index No. **21432/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

ALMONTE, CESAR SALCE, et al
-----X

A.J.S.C.

The following papers numbered 17 to 25, 27 and 29 to 33 in the NYSCEF System were read on this motion for **DISMISSAL**, noticed on **June 13, 2019** and duly submitted as No. 51 on the Motion Calendar of **July 12, 2019**

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits and Affidavits Annexed	17-25
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	27, 29-31
Replying Affidavit and Exhibits	32-33
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the motion of defendants Cesar Salce Almonte and Nathanael Salce Almonte for dismissal of plaintiff's allegations of carelessness and recklessness is denied, in accordance with the annexed decision and order

Dated: 09/27/2019

Hon. _____


JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
EDWARD RODRIGUEZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21432/2018E

CESAR SALCE ALMONTE, NATHANAEL SALCE
ALMONTE, MICHAEL DELMONTE, and VAUGHN
BROOKS,

Defendants.
-----X

John R. Higgitt, J.

Upon the May 16, 2019 notice of motion of defendants Cesar Salce Almonte and Nathanael Salce Almonte (“the Almonte defendants”), and the affirmation, and exhibits submitted in support thereof; the June 13, 2019 affirmation in support of defendants Michael Delmonte and Vaughn Brooks (“the Brooks defendants”); plaintiff’s June 28, 2019 affirmation in opposition and the exhibits submitted therewith; the Almonte defendants’ July 8, 2019 affirmation in reply; and due deliberation; the Almonte defendants’ motion for dismissal of plaintiff’s allegations of carelessness and recklessness is denied.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained as a result of a November 6, 2017 motor vehicle accident. In the complaint, plaintiff alleged that defendants operated their respective motor vehicles, among other things, in a “careless” manner resulting in plaintiff’s injuries (*see* complaint at para 26). In March 2018 the Almonte defendants joined issue. In May 2018 plaintiff served a bill of particulars in which plaintiff alleged, among other things, “recklessness, carelessness, and negligence in the ownership, maintenance, operation and control” of the Almonte defendants’ motor vehicle (*see* bill of particular para 3).

The Almonte defendants seek dismissal of the allegations of carelessness and recklessness, asserting that the circumstances of the accident do not warrant a finding of any conduct above ordinary negligence. The Almonte defendants submit the police accident report, which indicates that the accident involved a rear-end chain collision. The Almonte defendants assert that there is no evidence in the record to establish a high degree of moral culpability in this rear-end motor vehicle accident as to warrant an allegation of carelessness and recklessness.

The Almonte defendants' motion is, in effect, one for relief under CPLR 3024(b). Under CPLR 3024, "a party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." CPLR 3024 also applies to claims presented in the bill of particulars (*see Aronis v TLC Vision Ctrs., Inc.*, 49 AD3d 576 [2d Dept 2008]). In deciding a motion under CPLR 3024(b), the question is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action (*see Soumayah v Minnelli*, 41 AD3d 390 [1st Dept 2007]).

Plaintiff opposed the Almonte defendants' motion, arguing that defendants' motion is untimely because a motion to dismiss under CPLR 3211 should be made before defendants served their answer. Plaintiff provides an affidavit in which he averred that he was stopped at a red traffic light when he looked in his rearview mirror and observed that defendants' vehicles were "chasing" one another and revving their engines. Plaintiff asserts that the accident occurred when defendants engaged in reckless behavior - - racing - - causing the accident.

Regardless of whether the Almonte defendants' motion was timely, the court cannot say that the challenged allegations are not relevant to this action. The allegations coupled with plaintiff's affidavit and the pre-discovery posture of this action compel the court to deny the motion.


Accordingly, it is

ORDERED, that the Almonte defendants' motion is denied.

The parties are reminded of the October 18, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: September 27, 2019



John R. Higgitt, A.J.S.C.