

Robinson v Delgado

2024 NY Slip Op 33973(U)

November 6, 2024

Supreme Court, New York County

Docket Number: Index No. 156003/2019

Judge: James G Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X
INDEX NO. 156003/2019
KIM C. ROBINSON,
Plaintiff,
- v -
MOTION DATE 12/23/2024
KEM F. DELGADO, GVC LTD, JAMIL MOHAMMED, ENAID
CAB TRANS CORP.
MOTION SEQ. NO. 022 023 024
025 026
Defendant.

DECISION + ORDER ON MOTION

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 022) 369, 370, 371, 372, 373, 374, 375, 376, 379, 395, 396, 397, 398, 399, 400, 401, 402, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 471, 472
were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 023) 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 403, 404, 405, 406, 421, 422, 423, 424, 425
VACATE/STRIKE - NOTE OF ISSUE/JURY
were read on this motion to/for DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 024) 360, 361, 362, 363, 364, 365, 366, 367, 394, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 470
VACATE/STRIKE - NOTE OF ISSUE/JURY
were read on this motion to/for DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 025) 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482
JUDGMENT - SUMMARY
were read on this motion to/for

The following e-filed documents, listed by NYSCEF document number (Motion 026) 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497
DISCOVERY
were read on this motion to/for

The within decision consolidates Motion Sequence Nos. 022, 023, 024, 025, and 026 for disposition. In the instant action, plaintiff Kim C. Robinson ("plaintiff") seeks damage

personal injuries that she sustained as a passenger in a for-hire vehicle operated by defendant Jamil Mohammed (“Mohammed”) and was paying the fare when it was struck by a school bus operated by defendant Kem F. Delgado (“Delgado”) when plaintiff was paying Mohammed the fare owed for her ride and the car was stopped on the left side of Cauldwell Avenue in the Bronx on or about March 1, 2019.¹ The vehicle Mohammed was operating was owned by Enaid Cab Trans. Corp. (“Enaid”), and the vehicle Delgado was operating was owned by GVC Ltd. (“GVC”).

In Motion Sequence No. 022, defendants Mohammed and Enaid move for an order, pursuant to CPLR 3212, dismissing the complaint and any and all cross-claims against them, and granting said defendants summary judgment on the grounds that plaintiff has failed to establish liability against them. Plaintiff also cross-moves for an order, pursuant to SCPA 2301(2) and 22 NYCRR 130-1.1(a), seeking sanctions, costs, and attorneys’ fees against defendants Mohammed and Enaid, and is submitted in opposition to defendants Mohammed and Enaid’s motion seeking summary judgment.

In Motion Sequence No. 023, defendants GVC and Delgado move for an order (1), pursuant to CPLR 3101(a) and 22 NYCRR 202.21(e), vacating the Note of Issue and jury demand and strike this action from the trial calendar since the case is stayed and all pre-trial discovery proceedings have not yet been completed; (2), pursuant to CPLR 3101(a), compelling plaintiff to complete discovery; and (3), pursuant to CPLR 3212(a), extending the post-Note of Issue time for defendants GVC and Delgado to move for summary judgment. Plaintiff cross-moves for a protective order waiving further Independent Medical Examinations (“IMEs”) and, pursuant to SCPA 2301(2) and 22 NYCRR 130-1.1(a), seeking sanctions, costs, and attorneys’ fees as against defendants GVC and Delgado and to strike said defendants’ answer.

In Motion Sequence No. 024, defendants Mohammed and Enaid move for an order (1) vacating plaintiff’s Note of Issue and Certificate of Readiness and striking this action from the trial calendar; (2) vacating this Court’s April 14, 2024 preclusion order that precludes defendant Mohammed from testifying or providing affidavits as to liability; (3), pursuant to CPLR 3101(a) and (b) and 3121(a), compelling plaintiff to submit to further examinations before trial (“EBT”) and further IMEs; and (4) extending defendants Mohammed and Enaid’s time to file a motion for summary judgment to 120 days from the completion of discovery. Plaintiff cross-moves seeking

¹ This Court notes that Delgado is deceased, and the caption was amended to substitute the Bronx County Public Administrator as administrator of Delgado’s estate by order dated September 20, 2022 (NYSCEF Doc. No. 155).

a protective order waiving further IMEs of plaintiff and, pursuant to SCPA 2301(2) and 22 NYCRR 130-1.1(a), seeking sanctions, costs, and attorneys' fees as against defendants Mohammed and Enaid, and to strike said defendants' answer.

In Motion Sequence No. 025, defendants GVC and Delgado move for an order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing plaintiff's complaint with respect to liability because there is no evidence that defendants GVC or Delgado were negligent, or, in the alternative, granting summary judgment in favor of defendants GVC and Delgado on the cross-claims against defendants Mohammed and Enaid with respect to liability. Plaintiff also cross-moves for an order, pursuant to SCPA 2301(2) and 22 NYCRR 130-1.1(a), seeking sanctions, costs, and attorneys' fees against defendants GVC and Delgado, and is submitted in opposition to defendants GVC and Delgado's motion seeking summary judgment.

In Motion Sequence No. 026, plaintiff moves for an order compelling a further EBT and IME of plaintiff limited only to treatment that has occurred following plaintiff's prior EBT, or, in the alternative, deeming defendants' rights to conduct a further EBT and IME of plaintiff waived.

Defendants' motions for summary judgment are denied because they are premature as discovery has not yet been completed. Defendants can renew their motions upon the completion of discovery. Specifically, defendants Mohammed and Enaid's motion seeking summary judgment in Motion Sequence No. 022 is denied with leave to renew upon the completion of discovery, and plaintiff's cross-motion is granted in part to the extent that defendants Mohammed and Enaid's summary judgment motion is denied and is otherwise denied to the extent that it seeks sanctions, costs, and attorneys' fees against said defendants. Similarly, defendants GVC and Delgado's motion seeking summary judgment in Motion Sequence No. 025 is denied with leave to renew upon the completion of discovery, and plaintiff's cross-motion is granted in part to the extent that defendants GVC and Delgado's summary judgment motion is denied and is otherwise denied to the extent that it seeks sanctions, costs, and attorneys' fees against said defendants.

Defendants GVC and Delgado's motion in Motion Sequence No. 023, defendants Mohammed and Enaid's motion in Motion Sequence No. 024, and plaintiff's cross-motions in Motion Sequence Nos. 023 and 024 and motion in Motion Sequence No. 026 are granted to the extent that the parties are to conduct any further EBT(s) or IME(s) of plaintiff within 120 days of the date of this Decision and Order and all outstanding discovery is to be completed within the same time period; that branch of Motion Sequence No. 024 seeking to vacate this Court's prior

order dated April 15, 2024 that precludes Mohammed from testifying or providing affidavits as to liability (NYSCEF Doc. No. 323) is denied; defendants' time to file any additional summary judgment motions is hereby extended to 120 days post-Note of Issue pending the completion of discovery; and those branches of defendants' motions in Motion Sequence Nos. 022 and 023 seeking to vacate the Note of Issue and strike the instant action from the trial calendar are denied, and those respective branches of plaintiff's cross-motions in Motion Sequence Nos. 023 and 024 are granted; and the motions and cross-motions therein are otherwise denied.

Accordingly, it is hereby

ORDERED that defendants Mohammed and Enaid's motion seeking summary judgment in Motion Sequence No. 022 is denied with leave to renew upon the completion of discovery; and it is further

ORDERED that plaintiff's cross-motion in Motion Sequence No. 022 is granted in part to the extent that defendants Mohammed and Enaid's summary judgment motion is denied and is otherwise denied to the extent that it seeks sanctions, costs, and attorneys' fees against said defendants; and it is further

ORDERED that the branch of defendants GVC and Delgado's motion in Motion Sequence No. 023 seeking to vacate plaintiff's Note of Issue and strike the action from the trial calendar is denied; and it is further

ORDERED that the branch of defendants GVC and Delgado's motion in Motion Sequence No. 023 seeking to compel discovery is granted to the extent that the parties are to complete discovery within 120 days of the date of this decision and order, which includes any further IME(s) and EBT(s); and it is further

ORDERED that the branch of defendants GVC and Delgado's motion in Motion Sequence No. 023 seeking to extend the time to file a summary judgment motion post-Note of Issue to 120 days is granted; and it is further

ORDERED that plaintiff's cross-motion in Motion Sequence No. 023 for a protective order waiving further IMEs, seeking sanctions, costs, and attorneys' fees as against defendants GVC and Delgado, and to strike said defendants' answer is granted to the extent that discovery is to be completed within 120 days of the date of this decision and order, which includes any further IME(s) and EBT(s), and is otherwise denied; and it is further

ORDERED that the branch of defendants Mohammed and Enaid's motion in Motion Sequence No. 024 seeking to vacate plaintiff's Note of Issue and Certificate of Readiness and striking this action from the trial calendar is denied; and it is further

ORDERED that the branch of defendants Mohammed and Enaid's motion in Motion Sequence No. 024 seeking to vacate this Court's April 14, 2024 preclusion order that precludes defendant Mohammed from testifying or providing affidavits as to liability is denied; and it is further

ORDERED that the branch of defendants Mohammed and Enaid's motion in Motion Sequence No. 024 seeking to compel plaintiff to submit to further EBTs and IMEs is granted to the extent that the parties are to complete discovery within 120 days of the date of this decision and order, which includes any further IME(s) and EBT(s); and it is further

ORDERED that the branch of defendants Mohammed and Enaid's motion in Motion Sequence No. 024 seeking to extend the time to file a motion for summary judgment to 120 days from the completion of discovery is granted; and it is further

ORDERED that plaintiff's cross-motion in Motion Sequence No. 024 seeking a protective order waiving further IMEs of plaintiff, seeking sanctions, costs, and attorneys' fees as against defendants Mohammed and Enaid, and to strike said defendants' answer is granted to the extent that discovery is to be completed within 120 days of the date of this decision and order and is otherwise denied; and it is further

ORDERED that defendants GVC and Delgado's motion seeking summary judgment in Motion Sequence No. 025 is denied with leave to renew upon the completion of discovery; and it is further

ORDERED that plaintiff's cross-motion in Motion Sequence No. 025 is granted in part to the extent that defendants GVC and Delgado's summary judgment motion is denied and is otherwise denied to the extent that it seeks sanctions, costs, and attorneys' fees against said defendants; and it is further

ORDERED that plaintiff's motion in Motion Sequence No. 026 seeking to compel a further EBT and IME of plaintiff limited only to treatment that has occurred following plaintiff's prior EBT, or, in the alternative, deeming defendants' rights to conduct a further EBT and IME of plaintiff waived is granted to the extent that the parties are to complete discovery within 120 days

of the date of this Decision and Order, which includes any further IME(s) and EBT(s) and is otherwise denied.

This constitutes the Decision and Order of this Court.

11/6/2024

DATE

James G. Clynes
JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE