

Yakobson v Schubert
2013 NY Slip Op 30557(U)
March 20, 2013
Supreme Court, New York County
Docket Number: 400734/2009
Judge: Michael D. Stallman
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SCANNED ON 3/22/2013
[* 1]

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

Index Number : 400734/2009
YAKOBSON, MIKHAIL
vs.
SCHUBERT, WALDER R.
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. 400734/09
MOTION DATE 3/19/13
MOTION SEQ. NO. 003

The following papers, numbered 1 to 7 were read on this motion for summary judgment

Amended Notice of Motion—Affidavit of Service; Affirmation— Exhibits 1-8 | No(s). 1-2; 3
Affirmation in Opposition—Affidavit of Service | No(s). 4-5
Reply Affirmation —Affirmation of Service | No(s). 6-7

Upon the foregoing papers, it is ordered that this motion for summary judgment is decided in accordance with the annexed memorandum decision and order.

FILED

MAR 22 2013

**NEW YORK
COUNTY CLERK'S OFFICE**

HON. MICHAEL D. STALLMAN

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 3/20/13
New York, New York


_____, J.S.C.

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check if appropriate:..... MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. Check if appropriate:..... SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21**

-----X
MIKHAIL YAKOBSON,

Plaintiff,

Index No. 400734/2009

- against -

WALDER R. SCHUBERT, NEW YORK CITY TRANSIT
AUTHORITY, BRYAN CHAN, CARMELA ABRAHANTE,
ROYAL DRAPERIES, INC., YSNOC BAUDUY and 349 CAR
CORP.,

Decision and Order

FILED

Defendants.

MAR 22 2013

-----X
HON. MICHAEL D. STALLMAN, J.:

NEW YORK
COUNTY CLERK'S OFFICE

This action arose of out of an accident allegedly involving four motor vehicles on November 6, 2007, in southbound lanes of the FDR Drive, near an exit to South Street in Manhattan. The four vehicles concerned were: (1) a 2004 Mercedes Benz bearing license plate number CWF5243, allegedly owned and operated by defendant Bryan Chan; (2) a 2005 Jeep Grand Cherokee Laredo bearing license plate number DBH9144, allegedly operated by defendant Carmela Abrahante and allegedly owned by defendant Royale Draperies, Inc; (3) a 2007 Lincoln Town Car bearing license plate number T489011C allegedly operated by defendant Ysnoc Bauduy and allegedly owned by defendant 349 Car Corp; and (4) a bus bearing license plate number K42037, allegedly operated by Walder R. Schubert and allegedly owned by defendants New York City Transit Authority and Manhattan and Bronx Surface

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Transit Operating Authority (collectively, the Authorities).

Plaintiff Mikhail Yakobson was allegedly a passenger on the Authorities' bus.

Abrahante and Royale Draperies, Inc. now move for summary judgment dismissing the action as against them.

BACKGROUND

The multi-vehicle accident spawned this action and twelve others—bus passengers commenced ten actions; Bauduy and Abrahante commenced their own actions as well. All actions were coordinated for discovery and joined for trial as to liability. In addition, this Court also coordinated any contemplated motions for summary judgment as to liability in the actions. At a conference on June 23, 2011, the parties entered into a so-ordered stipulation dated June 23, 2011 which states, in pertinent part:

“Any motion or cross motion for summary judgment in any of the actions joined for trial based on liability shall be served on counsel in all the joined actions, and every party in each joined action has the right to submit papers to the motion or cross motion, and shall be bound by the court's decision in each respective action.”

(Sockett Affirm., Ex 6, at Exhibit D). Plaintiff Mikhail Yakobson was a signatory to the stipulation. (*Id.*)

In *Ramirez v Chan* (Index No. 401704/2008), defendants Carmela Abrahante and Royale Draperies, Inc. moved for summary judgment dismissing the complaint

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(*Id.* at 12 n 2.)

DISCUSSION

It is undisputed that counsel for plaintiff Mikhail Yakobson was a signatory to the so-ordered stipulation dated June 23, 2011, wherein he agreed to be bound by the Court's determination on any motions and cross motions for summary judgment based on liability, including the Court's decision and order dated July 16, 2012 in *Ramirez v Chan*.

Defendant Bryan Chan argues that summary judgment is a drastic remedy.

Defendants Abrahante and Royale Draperies, Inc. have demonstrated good cause for the delay. Plaintiff Mikhail Yakobson filed the note of issue in this action on March 29, 2012, several months before the Court's decision and order in *Ramirez v Chan*.

Moreover, defendants Abrahante and Royale Draperies, Inc. were apparently under the impression that Yakobson's complaint would be dismissed as against them, because they had agreed, like plaintiff Yakobson, to be bound by the Court's decisions in the coordinated motions and cross motions for summary judgment as to liability. However, an agreement to be bound by a determination in a related action joined for trial is not the equivalent to an agreement that any motion or cross motion made in one action would be deemed as a motion made in every other related action

joined for trial. This was not made apparent to defendants until the Court's decision and order dated July 16, 2012.

Therefore, the Court finds good cause shown for defendants' delay in moving for summary judgment.

Defendant Bryan Chan's argument is unavailing. The Court has already ruled in *Ramirez v Chan* that "defendant Abrahante's operation of [the] Jeep Cherokee Laredo owned by defendant Royale Draperies, Inc. was not negligent as a matter of law." Defendant Chan, like plaintiff Yakobson, agreed to be bound by that determination.

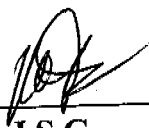
CONCLUSION

Accordingly, it is hereby ORDERED that the motion for summary judgment by defendants Carmela Abrahante and Royale Draperies, Inc. is granted, the complaint is severed and dismissed as against these defendants with costs and disbursements to these defendants as taxed by the Clerk upon the submission of an appropriate bill of costs, and all cross claims by these defendants in this action, and all cross claims against these defendants in this action, are severed and dismissed; and it is further

ORDERED that the remainder of the action shall continue.

Dated: March 20, 2013
New York, New York

ENTER:



J.S.C.

HON. MICHAEL D. STALLMAN

FILED

MAR 22 2013

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