

Jin Hae Choi v Lemaire

2013 NY Slip Op 30538(U)

March 14, 2013

Supreme Court, New York County

Docket Number: 401865/2011

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. ARLENE P. BLUTH

PRESENT: _____
Justice

PART 22

Index Number : 401865/2011
CHOI, JIN HAE
vs.
LEMAIRE, JEAN MARIEL
SEQUENCE NUMBER : 001
SUMMARY JUDGEMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 15, were read on this motion to/for ST

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1

Answering Affidavits — Exhibits _____ | No(s) 2,3,4,5,6,7,8

Replying Affidavits _____ | No(s) 9,10,11,12,13,14,15


Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

FILED
MAR 19 2013
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 3.14.13


_____, J.S.C.
HON. ARLENE P. BLUTH

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS 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 NY
COUNTY OF NEW YORK: PART 22

Index No.: 401865/2011
Mot. Seq. 001

Jin Hae Choi,

Plaintiff,

-against-

Jean Mariel Lemaire, Jean Robert Pepeine, Paul
M. Curra, Dominick A. Curra, Shaker S. Hauter,
R.R.I. Cab Corp., Christopher Ryan Hayes,
Michelle Watts, Walter D. Berry, Jr., Rajkumar
Tolani Sosai, Financial Services Trust,

DECISION/ORDER

HON. ARLENE P. BLUTH, JSC

FILED

Defendants.

MAR 19 2013

NEW YORK
COUNTY CLERK'S OFFICE

For the following reasons, the motion for summary judgment dismissing the case (all claims and cross-claims) against defendants Christopher Ryan Hayes and Michelle Watts is granted. At the time of the accidents, Mr. Hayes was driving Ms. Watts' vehicle, a Range Rover.

On January 11, 2009, at approximately 1:30 AM, a patch of the Long Island Expressway was icy. Consequently, several cars lost control, there were several accidents, and plaintiff claims personal injuries. Defendants Hayes and Watts move for summary judgment because they claim that their car never made contact with any of the vehicles involved in the accident in which plaintiff Choi alleges he was injured. Rather, Hayes claims that he was involved in a separate accident near the site of the Choi accident.

In order to prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact. *Alvarez v Prospect Hospital*, 68 NY2d 320, 508 NYS2d 923 (1986). Once the movant demonstrates entitlement to judgment, the burden shifts to the opponent to rebut that prima facie showing. *Bethlehem Steel Corp. v Solow*, 51 NY2d 870, 872, 433 NYS2d 1015 (1980). In opposing such a motion, the party must lay bare its evidentiary

proof. Conclusory allegations are insufficient to defeat the motion; the opponent must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact.

Zuckerman v City of New York, 49 NY2d 557 at 562, 427 NYS2d 595 (1980).

In deciding the motion, the court must draw all reasonable inferences in favor of the non-moving party and must not decide credibility issues. (*Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 562 NYS2d 89 [1st Dept 1990], *lv. denied* 77 NY2d 939, 569 NYS2d 612 [1991]). As summary judgment is a drastic remedy which deprives a party of being heard, it should not be granted where there is any doubt as to the existence of a triable issue of fact (*Chemical Bank v West 95th Street Development Corp.*, 161 AD2d 218, 554 NYS2d 604 [1st Dept. 1990]), or where the issue is even arguable or debatable (*Stone v Goodson*, 8 NY2d 8, 200 NYS2d 627 [1960]).

In his deposition (exh F to the moving papers), defendant Hayes testified that he was driving on his way to New Jersey on the LIE and came upon the scene of a multi vehicle accident. Mr. Hayes was in the left lane and the accident was on the right side of the road; he did not witness that accident but he did drive over car debris that was still in the left lane. There were no police cars or other emergency vehicles on the scene. As he was passing the accident and driving over the debris, he slowed and braked; unfortunately, he was rear-ended by the car behind him, which was driven by defendant Sosai. Plaintiff Choi was not in either the car Hayes was driving or in the Sosai vehicle. The impact with the Sosai vehicle pushed Hayes into the left guardrail/concrete barrier and his car came to a stop. Hayes testified that there were only two impacts to his vehicle – in the back where he was rear-ended and on the left side, where he hit the guardrail/concrete barrier. Wanting to move his car out of the left lane, he pulled over to the right and in front of the other accident scene. The police arrived shortly thereafter.

In sum, Mr. Hayes testified that his accident happened after the multi vehicle accident in which plaintiff claims he was injured and that he never came into contact with the vehicle in which plaintiff was riding. Therefore, defendants Hayes and Watts seek to have this case dismissed as against them.

In none of the opposition papers is there a single affidavit, or citation to any deposition testimony, from any of the parties or any other witness to connect the Hayes/Watts vehicle to the plaintiff's vehicle. Therefore, no one contests the facts testified to by Mr. Hayes. No one puts the Hayes/Watts vehicle in the pile up which allegedly injured the plaintiff. No one claims that the Hayes/Watts vehicle had anything to do with the accident in which Choi claims injuries. Of course, it is the opposition's burden to contradict the facts, and not a single person has come forth with anything to connect the Hayes/Watts vehicle to the Choi accident.

Because no one has demonstrated that there is any issue of fact necessary for a jury to determine, it is hereby

ORDERED that defendants Christopher Ryan Hayes' and Michelle Watts' motion for summary judgment dismissing all claims and cross-claims against them is granted, and it is further

ORDERED that the clerk is respectfully requested to remove defendants Christopher Ryan Hayes and Michelle Watts from the caption of this case, and it is further

ORDERED that within 30 days from entry of this order, counsel for the movant shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B); and it is further

ORDERED that the remaining parties are directed to appear for a DCM compliance conference on 3/18, 2013 at 9:30 AM at 80 Centre Street, Rm. 103.

This is the Decision and Order of the Court.

Dated: March 14, 2013
New York, New York



HON. ARLENE P. BLUTH, JSC

FILED
MAR 19 2013
NEW YORK
COUNTY CLERK'S OFFICE