

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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WILGAINSON TOUSSAINT,

Plaintiff(s),

-against-

Index No.: 536021/2023

VERIFIED ANSWER

NIGEL A. BERTRAND, VISIONPRO
INSTALLATIONS CORP. and SNAIDA ABDON,

Defendant(s).

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Defendants, NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP., by their attorneys, GALLO VITUCCI & KLAR LLP, as and for their answer to the Verified Complaint of the plaintiff, respectfully set forth as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs “1”, “2”, “7”, “8”, “9”, “10”, “11”, “24” and “26” of the Verified Complaint.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs “3”, “4”, “5”, “6”, “17”, “18”, “19”, “20”, “21”, “22” and “25” of the Verified Complaint and respectfully refer all questions of law to the Court at the time of trial.

3. Deny the allegations contained in paragraphs “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34” and “35” of the Verified Complaint.

4. Admit to the allegations contained in paragraphs “12”, “13”, “14”, “15”, “16” and “23” of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. Upon information and belief, any damage or damages sustained by the plaintiff herein were not caused by the wrongdoing on the part of the answering defendants, their servants, agents or employees, but were caused solely or in part by the wrongdoing of the plaintiff and that such conduct requires diminution of any award, verdict or judgment that plaintiff may recover against said answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. Upon information and belief, plaintiff's economic loss, if any, as specified in §4545 of the CPLR, was replaced or indemnified, in whole or in part, from collateral sources, and the answering defendants are entitled to have the Court consider same in determining such special damages as provided in §4545 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. Upon information and belief, this action must be dismissed for plaintiff's failure to state a cause of action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Upon information and belief, the injuries sustained by plaintiff are such that they do not fall within the requirements of Insurance Law Section 5101, et seq.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Upon information and belief, this Court lacks jurisdiction over the answering defendants by reason of improper service of process.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Upon information and belief, the injuries sustained were caused and/or increased by reason of the failure of plaintiff to use a seat belt.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANT,
SNAIDA ABDON**

10. That although NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP. have denied the allegations of plaintiff with respect to any wrongdoing on the part of said defendants, nevertheless, in the event that there is a verdict of judgment in favor of the plaintiff against NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP. then, and in that event, said defendants demand judgment over and against co-defendant SNAIDA ABDON, by reason of his wrongful conduct being primary and/or active while any wrongdoing of NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP., if any, was secondary and/or passive and the indemnity is to be full and complete.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANT,
SNAIDA ABDON**

11. Although NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP. have denied the allegations of plaintiff with respect to any alleged wrongdoing on the part of NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP., nevertheless, if it is found that NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP. are liable to the plaintiff herein, all of which is denied, said defendants, on the basis of apportionment of responsibility for the alleged occurrence, are entitled to contribution from and judgment over and against co-defendant, SNAIDA ABDON, for all or part of any verdict or judgment plaintiff may recover against NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP.

WHEREFORE, defendants, NIGEL A. BERTRAND and VISIONPRO INSTALLATIONS CORP. demand:

1. Judgment dismissing the Verified Complaint;
2. In the event that the complaint is not dismissed, then common law indemnity pursuant to the first cross-claim in accordance with degrees of wrongdoing;
3. In the event that common law indemnity is not granted, then contribution pursuant to the second cross-claim in accordance with degrees of wrongdoing; together with the costs and disbursements of this action.

Dated: New York, New York
March 25, 2024

Yours, etc.,

GALLO VITUCCI & KLAL LLP

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