

Danso v Penske Truck Leasing Corp.

2022 NY Slip Op 32241(U)

January 11, 2022

Supreme Court, Bronx County

Docket Number: Index No. 25232/2020E

Judge: Bianka Perez

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

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MARY DANSO,

Index No. 25232/2020E

Plaintiff,

-against-

Hon. Bianka Perez

Justice Supreme Court

PENSKE TRUCK LEASING CORP., et. als.,

Defendants.

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The following **NYSCEF docs** numbered **15-70** were read on this motion (Mot Seq **No. 1 & 2**) for **SUMMARY JUDGMENT LIABILITY/DISMISS AMENDED COMPLAINT** submitted **July 19, 2021 and September 28, 2021.**

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	Nyscef No(s). 38-55	72-87
Answering Affidavit and Exhibits	Nyscef No(s). 58-69	88-95
Reply Affidavit and Exhibits	Nyscef No(s). 70-71	96-97

Upon the foregoing papers, plaintiff moves for summary judgment on the issue of liability against defendants, PENSKE TRUCK LEASING CO., L.P., P. C. RICHARD & SON LONG ISLAND CORPORATION, VALENTIN GARCIA MOLINA, LIPARI TRUCKING INC. and LA POCHOTA TRUCKING CORP. (hereinafter Molina) and defendants, MERIT CONSTRUCTION, LLC and ROSARIO P. PUGLIESE (hereinafter Pugliese) move for summary judgment on the issue of liability dismissing as asserted against them the complaint and all crossclaims.

Plaintiff commenced this action to recover damages for injuries allegedly sustained in a multi-vehicle accident on December 28, 2017, on I-95 southbound near Exit 21, Portchester, New York. Plaintiff was the lead vehicle involved in the collision, defendant Pugliese was the middle vehicle, and defendant Molina was the rear most vehicle. Plaintiff’s affidavit states that while in heavy, slow-moving traffic, defendant Pugliese’s vehicle was rear ended by defendant Molina’s vehicle causing defendant Pugliese to rear end her vehicle.

Plaintiffs' Motion and Defendant Pugliese's Motion

On a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 852 [1985]). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which requires a jury trial (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). A motorist is under a “duty to see that which under the circumstances he [or she] should have seen by the proper use of his [or her] senses (VTL § 1141). Each driver in the exercise of ordinary prudence ought to have observed and used such care to avoid the collision as an ordinarily prudent person would have used under the circumstances (see *Shea v Judson*, 283 NY 393 [1940]; *Rennie v Barbarosa Transp.*, 151 AD2d 379, 380 [1st Dept 1989]; *Costalas v City of New York*, 143 AD2d 573 [1st Dept 1988]; also see, 1 NY PJI 2:79 [2d ed]). VTL § 1129 requires a driver to maintain sufficient space between vehicles to avoid a collision. In a rear-end collision, the burden shifts to the rear driver to come forward with a non-negligent explanation for the crash (*Abbott v Picture Cars E., Inc.*, 78 AD3d 869 [2nd Dept 2010]; *Costa v. Eramo*, 76 A.D.3d 942 [2nd Dept. 2010]). Only if the operator of the rear vehicle cannot come forward with any evidence to rebut the inference of negligence, may the plaintiff properly be awarded judgment as a matter of law (*D'Agostino v YRC, Inc.*, 120 AD3d 1291, 1292 [2d Dept 2014]; citing, *Barile v. Lazzarini*, 222 A.D.2d 635, 636 [2nd Dept 1995]).

In support of plaintiff's motion, plaintiff submits copy of the pleadings, certified police accident report, and her affidavit, which provide the facts necessary to trigger the prima-facie-case principle in this case with respect to plaintiff as against defendants, Molina. Plaintiff established that while stopped or stopping in heavy traffic, she was rear-ended by Pugliese's vehicle, after Molina's vehicle struck defendant Pugliese's vehicle causing the chain collision. In support of co-defendant Pugliese's motion he submits his affidavit, plaintiff's affidavit, copy of the pleadings and certified police accident report, which provide the facts necessary to trigger the prima-facie-case principle in this case with respect to defendants Molina.

In opposition to plaintiff's motion and co-defendant Pugliese's motion, defendant Molina failed to reveal a non-negligent explanation for the rear end collision as the rearmost driver.

Defendant Molina failed to explain why he failed to keep a safe distance from the defendant Pugliese's vehicle in front of him. Statements of a sudden stop, standing alone, are insufficient to rebut the presumption of negligence imputed on the rearmost vehicle involved in a rear-end collision (*Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept. 2018]; *Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]). The First Department has consistently granted summary judgment in plaintiff's favor where defendant has failed to show that he maintained a safe following distance behind plaintiff's vehicle. (*Morgan v Browner*, 138 AD3d 560 [1st Dept 2016]).

Plaintiff's branch of the motion requesting dismissal of the co-defendant Pugliese's affirmative defenses are moot as the Court has determined that defendant Pugliese is entitled to summary judgment on the issue of liability and has dismissed the complaint against him as he was not a proximate cause of the accident.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the issue of liability against defendants PENSKE TRUCK LEASING CO., L.P., P. C. RICHARD & SON LONG ISLAND CORPORATION, VALENTIN GARCIA MOLINA, LIPARI TRUCKING INC. and LA POCHOTA TRUCKING CORP. is granted, it is further

ORDERED, that defendants' MERIT CONSTRUCTION, LLC and ROSARIO P. PUGLIESE motion for summary judgment on the issue of liability as against defendants, PENSKE TRUCK LEASING CO., L.P., P. C. RICHARD & SON LONG ISLAND CORPORATION, VALENTIN GARCIA MOLINA, LIPARI TRUCKING INC. and LA POCHOTA TRUCKING CORP. is granted, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, PENSKE TRUCK LEASING CO., L.P., P. C. RICHARD & SON LONG ISLAND CORPORATION, VALENTIN GARCIA MOLINA, LIPARI TRUCKING INC. and LA POCHOTA TRUCKING CORP. on the issue of liability, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendants, MERIT CONSTRUCTION, LLC and ROSARIO P. PUGLIESE and against plaintiff and co-defendants dismissing the amended complaint and all cross-claims asserted as against them, it is further
it is further

ORDERED, that all remaining affirmative defenses of comparative fault or contributory negligence are dismissed.

This constitutes the decision and order of the Court.

Dated: January 11, 2022

Hon. *B. Perez*
BIANKA PEREZ, J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT