

**Fernandez v Morero**

2012 NY Slip Op 33685(U)

April 2, 2012

Supreme Court, Bronx County

Docket Number: 303816/09

Judge: Mark Friedlander

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This opinion is uncorrected and not selected for official publication.

4-13-12

PART 25

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX:

Case Disposed   
Settle Order   
Schedule Appearance

FERNANDEZ, ERWIN

Index No. 0303816/2009

-against-

Hon. MARK FRIEDLANDER

MORENO, DORIS

Justice.

The following papers numbered 1 to 6 Read on this motion, SUMMARY JUDGMENT DEFENDANT  
Noticed on December 02 2011 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of 1/17/2012

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1-2	
Answering Affidavit and Exhibits	3, 4, 5	
Replying Affidavit and Exhibits	6	
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

MOTION IS DECIDED IN ACCORDANCE WITH  
MEMORANDUM DECISION FILED HERewith.

Motion is Respectfully Referred to:  
Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 4/2/12

Hon.   
MARK FRIEDLANDER, J.S.C.

NEW YORK SUPREME COURT-COUNTY OF BRONX  
PART IA-25

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EDWIN FERNANDEZ,

Plaintiff,

-against

**MEMORANDUM  
DECISION/ORDER**  
Index No.: 303816/09

DORIS MORERO, JASON HERRERA, NAGUA  
TAXI, INC., MOSTAF G. MONSOUR, JONATHAN  
VASQUEZ, KEVIN A. ESPINOSA, NANCY S.  
HURDLE and JEWEL CANDACE LOGAN,

Defendants,

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HON. MARK FRIEDLANDER

Defendants, Nancy S. Hurdle ("Hurdle") and Jewel Candace Logan ("Logan"), move for an order, pursuant to CPLR§3212, dismissing plaintiff's complaint and all cross-claims against defendants Hurdle and Logan, with prejudice, upon the ground that there are no triable issues of fact requiring a trial of this action. The motion is decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for serious injuries allegedly sustained in a motor vehicle accident on January 18, 2009 as a result of the negligence of the defendants.

The facts, as culled from the motion papers, are as follows: On January 18, 2009, defendant Hurdle was the owner of a 2007 Toyota Scion, bearing Connecticut License Plate Number 336USW ("the Hurdle vehicle"), being operated by defendant Logan. Logan testified at her deposition that she was driving the Hurdle vehicle, at approximately 40-45 miles per hour, northbound in the middle lane on the Henry Hudson Parkway, a three lane highway, at approximately 4:00 a.m., when a large sports utility vehicle (Chevrolet Suburban) swerved into

her lane, causing a collision. As a result of the impact, the Hurdle vehicle swerved in a circle and hit the wall or guardrail on the right side of the highway. Logan's description indicated that the vehicle spun out of control and ended up on "whatever is left (remaining) of the shoulder." "It wasn't the usual break down shoulder. It was a little less than that." The Hurdle vehicle came to rest facing northbound on the shoulder, with the passenger door less than five feet from the guardrail, with a small portion (7.5%) extending into the right lane of moving traffic. The Chevrolet Suburban fled the scene of the accident and was never identified. Logan testified that, before exiting the Hurdle vehicle, she turned on her hazard lights and did not turn off her headlights. She further testified that, as a result of the accident, the Hurdle vehicle was disabled and couldn't be moved.

Defendant, Doris Morero ("Morero"), was the owner of a 2007 Nissan Altima, bearing Maryland License Plate Number 4CHT11 ("the Morero vehicle"), being operated by defendant, Jason Herrera ("Herrera"). Herrera testified that he was driving the Morero vehicle northbound in the right lane, at a speed of approximately 45 or 50 miles an hour, when a van in front of him suddenly swerved and moved into the middle lane. Herrera then saw the Hurdle vehicle stopped in the right hand lane, slammed on his brakes, but was unable to avoid a collision. At the time of this impact Herrera was traveling at 25 miles per hour. Herrera denied that the Hurdle vehicle had on its hazard or brake lights. Herrera then turned on his flashers and exited his vehicle. According to Herrera, the distance between the guardrail and the right lane was about a foot or two.

Defendant, Nagua Taxi, Inc. ("Nagua"), was the owner of 2008 Ford, bearing New York State License Plate Number 5G38 ("the Nagua vehicle"), being operated by defendant, Mostaf G.

Monsour ("Monsour"). Neither Nagua nor Monsour was ever deposed. Both Logan and Herrera testified that they witnessed the Nagua vehicle rear end the Morero vehicle. Logan testified that the Nagua vehicle hit the Morero vehicle approximately one to nine minutes after the Morero vehicle hit the Hurdle vehicle. While Herrera did not specify a time interval between his accident with the Hurdle vehicle and the Nagua vehicle hitting the Morero vehicle, he did testify that, after his accident with the Hurdle vehicle, he had exited his vehicle, hopped over the guardrail and had spoken to the occupants of the Hurdle vehicle. This corroborates Logan's testimony that there was a time interval between Hurdle/Morero accident and the Morero/Nagua accident.

Defendant, Jonathan Vasquez ("Vasquez"), was the owner of a 2008 Honda Accord, bearing New York State License Plate Number EKV2349 ("the Vasquez vehicle"), being operated by defendant, Kelvin A. Espinosa ("Espinosa"). Plaintiff was a passenger in the Vasquez vehicle. Herrera testified that less than one minute after the Nagua vehicle hit the Morero vehicle, the Vasquez vehicle hit the rear end of the Nagua vehicle. All collisions, with the exception of the one between the Chevrolet Suburban and the Hurdle vehicle, occurred in the right lane of the Henry Hudson Parkway.

Based upon the foregoing, the Court finds that defendants Hurdle and Logan are entitled to summary judgment dismissing plaintiff's complaint and all cross-claims against them. As previously stated, plaintiff was passenger in the Vasquez vehicle. It is undisputed that the Morero vehicle had its flashers or hazard lights on, and a sufficient interval of time had elapsed (from one to nine minutes) prior to the Nagua vehicle striking the Morero vehicle (and then the Vasquez vehicle striking the Nagua vehicle less than one minute later). The actions of the Nagua and/or Vasquez vehicles were the proximate cause of the plaintiff's accident. Thus, the actions

of Hurdle and Logan were not the proximate cause of plaintiff's accident. Consequently, it is irrelevant whether defendants Hurdle and Logan: (1) were actually involved in an accident with a Chevrolet Suburban and/or responsible therefor; and/or (2) had their flashers or hazard lights on after the alleged accident.

Accordingly, plaintiff's complaint against defendants Hurdle and Logan, only, and any cross-claims against Hurdle and Logan are dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: 4/2/12

  
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MARK FRIEDLANDER, J.S.C.