

Singh v Brown
2013 NY Slip Op 33629(U)
March 10, 2013
Sup Ct, Bronx County
Docket Number: 300758/2012
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 24

MAR 13 2014

Deosarran Singh and Rohinee Singh,
Plaintiffs,
-against-

Index No. 300758/2012
Present: Hon. Sharon A. M. Aarons

Arthur W. Brown, Mohan Singh, Yung Kim and
BNJ Trucking, Inc.,

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of motion(s) and/or cross-motion(s), as indicated below:

Papers	Numbered
<u>Notice of Motion/ Order to Show Cause and Affidavits Annexed</u>	<u>1</u>
<u>Answering Affidavits</u>	<u>2,3</u>
<u>Replying Affidavits</u>	<u>4</u>
<u>Others:</u>	

Upon the foregoing papers, the foregoing motion and cross-motion are decided as follows:

Defendant Mohan Singh's motion for summary judgment pursuant to 3212 dismissing the complaint and all cross-claims against him is decided in accordance with the annexed Decision and Order of the same date.

Dated: March 10, 2013


SHARON A.M. AARONS. J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 24

Deosarran Singh and Rohinee Singh,
 Plaintiffs,
 -against-

Index No. 300758/2012

DECISION and ORDER

Arthur W. Brown, Mohan Singh, Yung Kim and
BNJ Trucking, Inc.,

Defendants.

Hon. Sharon A. M. Aarons:

Defendant Mohan Singh's moves for summary judgment pursuant to 3212 dismissing the complaint and all cross-claims against him. Plaintiffs, and defendants Yung Kim ("Kim") and BNJ Trucking, Inc. ("BNJ") submit written opposition. The motion is granted.

This personal injury action arises out of a three-vehicle collision which occurred on March 23, 2011, on the Van Wyck Expressway in Queens, New York. The plaintiff Deosarran Singh was a passenger in the moving defendant's vehicle. The moving defendant asserts that a vehicle driven by defendant Arthur W. Brown ("Brown") came to a stop in front of him, and that he brought his vehicle to a stop behind him, when he was struck in the rear by a vehicle driven by defendant Kim and owned by defendant BNJ, and propelled into the Brown vehicle.

In support of the motion, defendant Mohan Singh submits the summons and complaint; the answers of the defendants; the unsigned, certified deposition of defendant Mohan Singh; the unsigned, certified deposition of defendant Brown; and, the unsigned, certified deposition of defendant Kim. Defendant argues that he is not liable as a matter of law as he had come to a full stop, and was himself struck in the rear and propelled into another vehicle.

Plaintiffs, in opposition, submit no evidence, but argue that the motion must be denied because the moving defendant has relied on unsigned deposition transcripts. In addition, plaintiffs argue that the moving defendant failed to submit all of the pleadings, having omitted the defendants' replies to cross-claims and the plaintiffs' bill of particulars.¹

In opposition, defendants Kim and BNJ submit no evidence, but argue that defendant Mohan Singh has not established freedom from liability. Nevertheless, they opine that the accident occurred when defendant Brown slowed his vehicle "almost to a stop," in order to change lanes to exit, based upon the deposition testimony of defendant Brown submitted in support of defendant Mohan Singh's motion for summary judgment.

Pursuant to CPLR 3116 (a), a deposition transcript must be provided to the deponent for his or her review and signature. If a deponent refuses or fails to sign his or her deposition under oath within 60 days, it may be used as if fully signed. The party seeking to use an unsigned deposition transcript thus bears the burden of demonstrating that a copy of the transcript had been submitted to the deponent for review and that the deponent failed to sign and return it within 60 days (*Franzese v. Tanger Factory Outlet Ctrs., Inc.*, 88 A.D.3d 763, 930 N.Y.S.2d 900 [2d Dept. 2011]), unless the deposition is admissible under one of the exceptions discussed below.

Unsigned deposition transcripts are admissible in support of a motion for summary judgment in certain limited circumstances. First, a deposition transcript which was not signed, but which is certified by the reporter, may be considered where it is not challenged as inaccurate. (*Ortiz v. Lynch*, 105 A.D.3d 584, 965 N.Y.S.2d 84 [1st Dept. 2013]; *Bennett v Berger*, 283 AD2d 374, 726 N.Y.S.2d

¹ The court notes that denial on this ground should be without prejudice to renew the motion on proper papers. (*Wider v. Heller*, 24 A.D.3d 433, 805 N.Y.S.2d 130 [2d Dept. 2005] [denial of the motion should have been without prejudice to renewal upon proper papers].)

22 [1st Dept. 2001]). Second, a certified, unsigned deposition transcript submitted by the party deponent is deemed to be adopted as accurate by the deponent, and is admissible. (*Franco v. Rolling Frito-Lay Sales, Ltd.*, 103 A.D.3d 543, 962 N.Y.S.2d 54 [1st Dept. 2013]; *Pavane v. Marte*, 109 A.D.3d 970, 971 N.Y.S.2d 562 [2d Dept. 2013]; *Vetrano v J. Kokolakis Contr., Inc.*, 100 AD3d 984, 986, 954 N.Y.S.2d 646 [2d Dept. 2012]; *Rodriguez v Ryder Truck, Inc.*, 91 AD3d 935, 936, 937 N.Y.S.2d 602 [2d Dept. 2012].) Third, an admission against interest contained in an unsigned deposition transcript may be placed in evidence. (*Tower Ins. Co. of N.Y. v. Khan*, 93 A.D.3d 618, 941 N.Y.S.2d 560 [1st Dept. 2012].)

In the present case, the moving defendant may rely on his own deposition transcript, albeit that it is not signed, under the authority cited above.

With respect to the alleged failure to annex all of the pleadings to the moving papers, CPLR 3212 (b) requires that a motion for summary judgment be supported by copies of a complete set of the pleadings. (*Edgett v. North Fork Bank*, 72 A.D.3d 1635, 899 N.Y.S.2d 691 [4th Dept. 2010] [Supreme Court properly denied the motion, regardless of its merits, inasmuch as party failed to provide in support of its motion a copy of all of the third-party pleadings].) The court may excuse this procedural defect when the record is "sufficiently complete" (*Welch v Hauck*, 18 AD3d 1096, 1098, 795 NYS2d 789 [3d Dept 2005], *lv denied* 5 NY3d 708, 836 NE2d 1152, 803 NYS2d 29 [2005]), meaning a complete set of the papers is available from the materials submitted. (*Washington Realty Owners, LLC v. 260 Wash. St., LLC*, 105 A.D.3d 675, 964 N.Y.S.2d 137 [1st Dept. 2013]; *Studio A Showroom, LLC v Yoon*, 99 AD3d 632, 952 NYS2d 879 [1st Dept 2012] [the pleadings were filed electronically and were available for the court's consideration]; *Pandian v New York Health & Hosps. Corp.*, 54 AD3d 590, 591, 863 NYS2d 668 [1st Dept 2008] [the pleadings were

attached to the reply papers]; *Welch*, 18 AD3d at 1098 [summary judgment properly granted to plaintiff on cross motion where pleadings were attached to defendant's motion for summary judgment]).

The plaintiffs in opposition assert that the moving defendant failed to attach a copy of the plaintiffs' bill of particulars. The moving defendant sought to rectify this error by submitting the bill of particulars was annexed, however, to the moving defendant's reply papers. In any event, a bill of particulars is not a pleading, but serves to amplify the pleadings, and its omission on a motion for summary judgment therefore does not require denial of the motion. (*Osgood v. KDM Dev. Corp.*, 92 A.D.3d 1222, 938 N.Y.S.2d 397 [4th Dept. 2012]; *D'Auria v. Kent*, 80 A.D.3d 956, 915 N.Y.S.2d 680 [3d Dept. 2011].)

With respect to the failure to annex the answers to the cross claims in this action, the Court has not been able to locate any case which addresses this issue. The Court finds that this technical error does not warrant denial of the motion. CPLR 3011 gives a party serving a cross claim the option to require an answer by including a demand in the pleading. Conversely, if no demand is made, no reply is required, and the cross claim is simply deemed denied or avoided. None of the answers submitted on the present motion contained such a demand. No purpose would be served by requiring that any answers to cross claim be annexed to the moving papers on a motion for summary judgment, in view of the fact that the cross claim is deemed denied as a matter of law.

Consequently, the motion is properly before the court, and the moving defendant's own deposition testimony, as well as defendant Brown's admission may be considered on the motion. The moving defendant's reliance on his own deposition testimony is sufficient to establish his freedom from negligence. Clearly the moving defendant slowed down or stopped due to defendant

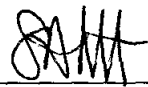
Browns' actions, as defendant Brown admitted that he came to a near stop on a major highway. It is well established that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the offending vehicle and imposes a burden on him or her to proffer a non-negligent explanation for the accident. (*Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 [1st Dept. 2006]; *Mullen v. Rigor*, 8 A.D.3d 104, 778 N.Y.S.2d 168 [1st Dept. 2004]; *Malone v. Morillo*, 6 A.D.3d 324, 775 N.Y.S.2d 312 [1st Dept. 2004]; *Singh v. Sanders*, 286 A.D.2d 256, 729 N.Y.S.2d 119 [1st Dept. 2001]; *Mitchell v. Gonzalez*, 269 A.D.2d 250, 703 N.Y.S.2d 124 [1st Dept. 2000]). Moreover, the failure of an opposing party to rebut the presumption of negligence will entitle the moving party to summary judgment on the issue of fault. (*Toulson v. Young Han Pae*, 6 A.D.3d 292, 774 N.Y.S.2d 706 [1st Dept. 2004]).

Accordingly, defendant's motion for summary judgment dismissing all claims and cross claims against him is granted. It is hereby

ORDERED that the complaint and all cross claims against defendant Mohan Singh only are dismissed, and it is

ORDERED that defendant Mohan Singh's counsel shall serve a copy of this order with notice of entry upon all parties.

Dated: March 10, 2013


SHARON A.M. AARONS. J.S.C.