

Tavarez v Felix Manuel Castillo Herasme

2016 NY Slip Op 31459(U)

July 1, 2016

Supreme Court, Bronx County

Docket Number: 0305639/2013

Judge: Doris M. Gonzalez

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - COUNTY OF BRONX

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PART 24

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX

Case Disposed
 Settle Order
 Schedule Appearance

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TAVAREZ,JEFFREY

Index No. 0305639/2013

-against-

Hon. DORIS M. GONZALEZ,

HERASME,FELIX MANUEL CASTILLO

Justice.


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The following papers numbered 1 to _____ Read on this motion,
 Noticed on and duly submitted as No. _____ on the Motion Calendar of _____

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

SEE MEMORANDUM DECISION

Dated: July 1, 2016



 Hon. DORIS M. GONZALEZ, A.J.S.C.

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

JEFFREY TAVAREZ,

Plaintiff,

Index No.: 305639-2013

-against-

DECISION/ORDER

FELIX MANUEL CASTILLO HERASME,
ENTERPRISE FM TRUST and A.J. RICHARD
& SONS, INC.,

Defendant.

The Motion is Decided pursuant to CPLR Rule 9001

Recitation, as required by CPLR§2219[a], of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
<u>Notice of Motion, Affirmation and Exhibits</u>	<u>1,2,3</u>
<u>Affirmation in Opposition and Exhibits</u>	<u>4,5</u>
<u>Reply Affirmation</u>	<u>6</u>

GONZALEZ, D.

Upon the foregoing cited papers, the Decision /Order on this motion is as follows:

The defendants move by Notice of Motion, by Jeffrey M. Burkoff, Esq., attorney for defendants Felix Manuel Castillo Herasme, Enterprise FM Trust and A.J. Richard & Sons, Inc., dated March 18, 2016, for an order pursuant to CPLR R 2221(e), granting renewal and reconsideration of the order of the order of the Honorable Sharon Aarons, dated January 5, 2015, which granted the plaintiff summary judgement pursuant to CPLR R 3212 on liability.

The plaintiff opposes the motion, by Daniel A. Berger, Esq., attorney for the plaintiff, by Affirmation in Opposition, dated April 15, 2016. A Reply Affirmation, dated April 29, 2016, was submitted in support of the motion.

FACTUAL BACKGROUND

It is alleged that on or about February 12, 2013, on West 190th Street, at or near the intersection of Wadsworth Terrace, in the County, City, and State of New York, the plaintiff and the defendant were involved in an automobile accident.

The plaintiff was driving on West 190th Street. The defendant's vehicle was double parked. As the plaintiff proceeded on West 190th Street, the rear door of the defendant's vehicle opened and struck the plaintiff's vehicle.

PROCEDURAL HISTORY

The plaintiff commenced this action by filing a Summons and Complaint to recover for injuries allegedly sustained as a result of the automobile accident that occurred on February 12, 2013. Issue was joined by service of an Answer by the defendants on or about November 4, 2013.

The plaintiff moved by Notice of Motion, returnable September 8, 2014, for an order for summary judgement on the issue of liability. By order dated January 5, 2015, and entered on January 21, 2015, the plaintiff's motion was granted by the Honorable Sharon Aarons. The court found that the accident was caused by the defendant's negligence and granted liability in favor of the plaintiff.

DISCUSSION OF LAW

On February 3, 2015, an EBT was conducted of the plaintiff. It is alleged that the plaintiff's EBT revealed new evidence. The EBT showed inconsistencies between the plaintiff's EBT testimony, the investigating police officer's affidavit, and the defendant's version of the incident. The defendant asserts that the discrepancies raise questions of fact unknown to the defendant at the time of the making of the motion for summary judgment. The inconsistencies

allegedly shed light regarding the plaintiff's comparative negligence, to support the making of the instant motion to renew, and to reverse the order of Justice Aarons for summary judgement.

The plaintiff contends that there are no new facts to be offered at this time in addition to the facts offered when the prior motion was made to change the Court's prior determination. The plaintiff argues that even if the defendant's representations are true, the defendant has failed to raise any issues of fact, for the Court to consider.

Pursuant to CPLR R 2221, a motion for renewal must be based upon new facts which exist at the time the prior motion was made, and which were not then know. *Foley v Roche*, 68 AD2d 558 (1st Dept 1979). The motion must also include a reasonable explanation for the failure to provide such facts on the prior motion.

The defendant offers no new proof upon which to base the instant application, but rather, seeks to convince the Court to re-consider the issues and arguments presented under the original motion, made in 2014. *See, Rubinstein v Goldman*, 225 AD2d 328, (1st Dept 1996).

Accordingly, based on the foregoing; a review of the Court file; and due deliberation; it is hereby

ORDERED, the defendant's motion to renew is denied.

This constitutes the decision and order of this Court.

Date: July 1, 2016
Bronx, New York



Hon. DORIS M. GONZALEZ, A.J.S.C.