

Rosario v Amino

2017 NY Slip Op 31749(U)

July 19, 2017

Supreme Court, Bronx County

Docket Number: 300697/2016

Judge: Jr., Kenneth L. Thompson

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This opinion is uncorrected and not selected for official publication.

Dismissed

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 X

JULIO ROSARIO,

Index No: 300697/2016

Plaintiff,

-against-

DECISION AND ORDER

YAKOV AMINO,

Defendants.

Present:
HON. KENNETH L. THOMPSON, JR.

_____ X

The following papers numbered 1 to 2 read on this motion for summary judgment

No	On Calendar of June 16, 2017	PAPERS NUMBER
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1
	Answering Affidavit and Exhibits-----	2
	Replying Affidavit and Exhibits-----	_____
	Affidavit-----	_____
	Pleadings -- Exhibit-----	_____
	Memorandum of Law-----	_____
	Stipulation -- Referee's Report --Minutes-----	_____
	Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendant moves pursuant to CPLR 3212 for summary judgment dismissing the complaint. This action arose as a result of personal injuries sustained by plaintiff, when a vehicle plaintiff was operating was struck by a vehicle operated by defendant, as plaintiff's vehicle pulled into the lane of traffic in which defendant's vehicle was traveling.

Plaintiff testified that he was stopped in his lane of traffic, and that the defendant's vehicle was one and a half to two car lengths behind where plaintiff's vehicle was stopped. "The plaintiff made a prima facie showing of negligence on the part of the appellant, Robert Dishotsky, based on Dishotsky's deposition testimony that the motor vehicle accident at issue occurred when he pulled out of a parking spot and into a lane of moving traffic (see, Vehicle and Traffic Law § 1128 [a]). *Calandra v. Dishotsky*, 244 A.D.2d 376, 376-77 [2nd Dept 1997]).

Whether there was construction in plaintiff's lane of travel or not does not cast any negligence upon defendant for failing to avoid a collision with a vehicle entering his lane from a dead stop, one and a half to two car lengths ahead of defendant's vehicle. There is no evidence that defendant was speeding. Defendant testified he was traveling at 20 mph.

Accordingly, defendant's motion for summary judgment is granted, and the complaint is hereby dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: 7/19/2017



KENNETH L. THOMPSON JR. J.S.C.