

Knispel v Porrini

2017 NY Slip Op 33477(U)

June 5, 2017

Supreme Court, Nassau County

Docket Number: Index No. 605139-15

Judge: Daniel Palmieri

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

P R E S E N T : HON. DANIEL PALMIERI, J.S.C.

-----X
ELIOT D. KNISPEL,

Plaintiff,

-against-

PAUL PORRINI and JOYCE OLEARY,

Defendants.

-----X
LUCILLE KNISPEL,

Plaintiff,

-against-

PAUL PORRINI and JOYCE OLEARY,

Defendants.

-----X
KEVIN HAND,

Plaintiff,

-against-

PAUL PORRINI and JOYCE OLEARY,

Defendants.
-----X

TRIAL/IAS PART 16

Index No.: 605139-15

Action #1

Mot. Seq. 003

Mot. Date: 4-10-17

Submit Date: 5-12-17

Index No.: 606429-16

Action #2

Mot. Seq. 002

Mot. Date:

Submit Date: 5-12-17

Index No: 606430-16

Action #3

Mot Seq. 001

Mot. Date: 4-10-17

Submit Date: 5-12-17

The following papers have been read on these motions:

Action #1, Sequence 003:

- Notice of Motion dated 2-6-17, w/supporting papers.....1
- Affirmation in Opposition, dated 3-13-17.....2
- Reply, dated 3-13-17.....3
- Affirmation in Support, dated 3-27-17.....4

Action #2, Seq. 002:

- Notice of Motion dated 5-2-17, w/supporting papers.....1
- Affirmation in Opposition, dated 5-8-17.....2
- “Notice of Cross Motion” (no seq. #), dated 3-10-17.....3
- Affirmation in Opposition, dated 3-21-17.....4

Action #3, Seq. 001:

- Notice of Motion dated 3-24-17, w/supporting papers.....1
- Affirmation in Opposition, dated 3-29-17.....2

The motion by plaintiff Eliot Knispel in Action#1 (seq. 003) pursuant to CPLR 3212 for summary judgment in his favor on the issue of liability/fault is granted.

The motion by plaintiff Lucille Knispel in Action #2 (seq. 002) pursuant to CPLR 3212 for summary judgment in her favor on the issue of liability/fault is granted.

The motion by plaintiff Kevin Hand in Action #3 (seq. 001) pursuant to CPLR 3212 for summary judgment in his favor on the issue of liability/fault is granted.

Initially, the Court rejects the purported “cross motion” by plaintiff in Action #2. Notwithstanding its date, which is earlier than the main motion, it appears to be no more than an improper reply. It seeks to insure that the Court will accept her adoption of the arguments made by Eliot Knispel on his motion for summary judgment, which is addressed below, rather than addressing the opposition filed by defendants against her main motion, and thus should not be considered for that reason. *See Ramos v Cooper*

Tire and Rubber Co., 51 AD3d 896 (2d Dept. 2008).¹ The Court notes that no sequence number ever was assigned. This paper and the opposition thereto are listed here as papers read to insure a complete record for any appellate review, but for no other purpose.

These cases stem from a multi-car and motorcycle accident that took place in Bohemia, Suffolk County on September 28, 2013 at approximately 7:00 a.m. Defendants in all three actions are Paul D. Porrini, driver, and Joyce A. O'Leary, owner, of the vehicle plaintiffs allege caused the subject accident.

The Court turns first to the motion made by Eliot Knispel, plaintiff in Action #1. The ground asserted is collateral estoppel, specifically, the administrative findings upon a New York State Department of Motor Vehicle Safety Hearing, and a decision on a summary judgment motion in a prior action brought against Joyce O'Leary and Paul Porrini by the estate of the motorcyclist Christopher Lee White (not a party to these present actions), whose death as a result of the accident led to both proceedings.

Movant presents a copy of a "Finding Sheet" made by Administrative Law Judge Andrew A. Girdhari dated April 4, 2015, in which he found that Paul Porrini ran a red light at the intersection of Veterans Highway and Johnson Avenue in Bohemia, New York, striking Mr. White and causing his death. That paper indicates that although notified, Porrini did not attend the hearing. He also submits the Decision and Order of the Supreme Court, Suffolk County (Rouse, ASCJ), dated August 12, 2015, in which he found, *inter alia*, that Porrini had pled guilty to Aggravated DWI, Vehicular

¹ This does not mean, however, that motion seq. no. 2 in Action #2 by Lucille Knispel is fatally defective. The correctly filed notice of motion does adopt the arguments made by Eliot Knispel in Action #1. Those arguments thus will be considered, but only if so made by Eliot Knispel, because the adoption thereof is contained in Lucille Knispel's initial moving papers.

Manslaughter in the Second Degree and Manslaughter in the Second Degree. Justice Rouse also found that Porrini had admitted during the plea allocution that he had been driving while his ability was impaired by cocaine and morphine, and had failed to stop for a red light at a controlled intersection. The Court's Decision and Order indicates that opposition and a motion were filed on behalf of defendants by their attorneys.

In addition, movant Eliot Knispel, a front seat passenger in the vehicle being driven by his wife Lucille, plaintiff in Action #2, presents the transcript of his deposition and that of Lucille. They demonstrate that Lucille was stopped at the intersection, in the rightmost of two left-turning lanes, intending to turn left on to Veterans Highway. White was on his motorcycle immediately to her left in the other turning lane. Both Eliot and Lucille testified, in effect, that almost immediately after the left-turn arrow facing them had turned green there was a sudden impact to the left side of their vehicle. Lucille Knispel also testified that she had observed out of the corner of her eye what was later identified as a white van driven by Porrini approaching from the left, and that it was not slowing down.

Generally speaking, to obtain summary judgment it is necessary that the movant establish its claim or defense by the tender of evidentiary proof in admissible form sufficient to warrant the court, as a matter of law, in directing judgment in its favor. CPLR 3212 (b). This burden cannot be met simply by demonstrating that there are gaps in the adversary's case or that a key factual claim cannot be established by the motion opponent. *See River Ridge Living Center, LLC v ADL Data Systems, Inc.*, 98 AD3d 724 (2d Dept. 2012); *see also Calderone v Town of Cortlandt*, 15 AD3d 602 (2d Dept. 2005). In negligence cases, there may be more than one proximate cause of the injury-

causing occurrence (*Lopez v Reyes-Flores*, 52 AD3d 785 [2d Dept. 2008]), and thus the proponent of the motion must establish freedom from comparative negligence as a matter of law. *Pollack v Margolin*, 84 AD3d 1341 (2d Dept. 2011). Absent this initial showing, the court should deny the motion, without passing on the sufficiency of the opposing papers. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 (1985).

If such a *prima facie* case is made, the burden shifts to the non-moving party. To defeat the motion for summary judgment the opposing party must come forward with evidence to demonstrate the existence of a material issue of fact requiring a trial. CPLR 3212 (b); *see also GTF Marketing, Inc. v. Colonial Aluminum Sales, Inc.*, 66 NY2d 965 (1985); *Zuckerman v. City of New York*, 49 NY2d 557 (1980). The non-moving party must lay bare all of the facts at its disposal regarding the issues raised in the motion. *Mgrditchian v. Donato*, 141 AD2d 513 (2d Dept. 1988). Conclusory allegations are insufficient (*Zuckerman v. City of New York, supra*), and the defending party must do more than merely parrot the language of the complaint or bill of particulars. There must be evidentiary proof in support of the allegations. *Fleet Credit Corp. v. Harvey Hutter & Co., Inc.*, 207 A.D.2d 380 (2d Dept. 1994); *Toth v. Carver Street Associates*, 191 AD2d 631 (2d Dept. 1993).

In this case, Eliot Knispel has established *prima facie* his entitlement to judgment as a matter of law. The depositions cited demonstrate that Eliot was a passenger, and thus had no role to play in the movement of the vehicles. “The right of the plaintiff, as an innocent passenger, to summary judgment is not ‘restricted by potential issues of comparative negligence’ which may exist” as between two defendant drivers. *Anzel v Pistorino*, 105 AD3d 784, 786 (2d Dept. 2013), quoting *Medina v Rodriguez*, 92 AD3d

850 (2d Dept. 2012). He has further shown that Porrini ran the red light and thus he was in violation of Vehicle and Traffic Law §§ 1110 and 1111, which required him to obey the traffic signal and to come to a halt in the face of a steady red signal, and that this failure caused the accident. This has been established by the proof cited above, including but not limited to the findings of the Supreme Court, Suffolk County, which is binding on defendants as a matter of collateral estoppel, in that there are an identity of issues and a demonstration of full and fair opportunity having been given to the party adversely affected thereby. *See, e.g., Montoya v JL Astoria Sount, Inc.*, 92 AD3d 376 (2d Dept. 2012). In response, defendants have failed to raise an issue of fact either as to Eliot Knispel's role as an innocent passenger, or the effect of the prior proceedings in which the issue of his liability was established. The procedural objections raised have been reviewed, but have been addressed in reply, and in any event are not found to have fatally compromised defendants' ability to respond to the motion. Accordingly, summary judgment on liability should be granted to Eliot Knispel.

Next, the proof and arguments made by Eliot Knispel are adopted by Lucille Knispel on her own motion for this relief. Although she was the driver and not the passenger, the deposition testimony, other proof and arguments she adopts as presented by Eliot Knispel, cited above, are sufficient to establish her *prima facie* right to judgment as a matter of law on the issue of defendants' liability. In response, defendants have failed to raise an issue of fact. Although correctly citing authority that places the burden on Lucille Knispel to demonstrate freedom from comparative negligence, as noted above, her deposition testimony and that of her husband do so. In the face of that testimony, defendants have presented no proof that places either in issue. Accordingly, summary

judgment on liability is granted to Lucille Knispel as well.

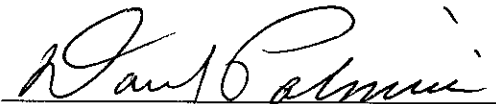
The Court now turns to the motion made by Kevin Hand, plaintiff in Action #3. He too relies on the prior proceedings noted above to establish Porrini's fault. Further, his deposition testimony demonstrates his own freedom from comparative negligence. Although there are gaps in his knowledge about the details of the accident, he nonetheless testified that he was on Veterans Highway at a red light, and was fully stopped in the left-hand turning lane for at least 10 seconds before he was struck by a white van, later identified as being operated by Porrini. The Court thus finds, contrary to defendants' contention, that a *prima facie* case of Porrini's fault and Hand's own freedom from comparative fault have been established. In response, defendants have failed to present any proof placing these showings in issue. Accordingly, Hand's motion is granted.

The Court reminds all parties that the foregoing does not address and contains no determinations as to whether any of these three plaintiffs suffered a compensable "serious injury" as that term is defined by the Insurance Law. See *VanNostrand v. Froehlich*, 44 AD3d 54 (2d Dept. 2007); *Abbas v. Cole*, 44 AD3d 31 (2d Dept. 2007); *Zecca v. Riccardelli*, 293 AD2d 31 (2d Dept. 2002).

This shall constitute the Decision and Order of this Court.

DATED: June 5, 2017

ENTER:


HON. DANIEL PALMIERI
Supreme Court Justice

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE

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