

Umana v Yahner

2018 NY Slip Op 34190(U)

June 21, 2018

Supreme Court, Nassau County

Docket Number: Index No. 609462/16

Judge: Antonio I. Brandveen

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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

OSCIEL UMANA and HUMBERTO CRUZ,

TRIAL / IAS PART 27
NASSAU COUNTY

Plaintiff,

Index No. 609462/16

- against -

Motion Sequence No. 003

JAMES D. YAHNER and JAMES N.
YAHNER,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

Plaintiff/counterclaim defendant Osciel Umana (hereinafter Umana) moves for an order pursuant to CPLR 3212 dismissing the defendants' counterclaim and granting summary judgment in his favor on the issue of liability.

The defendants, through their attorney, oppose Umana's motion on the

grounds that (1) the plaintiffs' prior motion for summary judgment, which was denied by this Court on August 11, 2017 (Brandveen, J.), did not specifically permit the plaintiffs to renew their motion after discovery; (2) Umana was required to designate the motion at bar as a motion for leave to renew his prior motion for summary judgment; (3) the accident and injuries to the plaintiffs were partially or wholly due to the negligence of Umana, who operated the plaintiffs' vehicle at the time of the accident; (4) Umana has failed to demonstrate new facts which would change the decision on the prior motion, and reasonable justification for the failure to present those facts; and (5) the deposition testimony adduced after the court's August 11, 2017, decision supports defendant James N. Yahner's allegation in the original motion that the plaintiffs' trailer did not have any brake lights and thus Umana, the operator of the plaintiffs' vehicle is comparatively at fault for the happening of the accident.

Umana's attorneys' reply to the defendants' opposition *inter alia* assails the defendants' counsels' argument - that Umana must seek leave to renew the prior summary judgment motion - as a mere "technicality."

Although Umana's attorney did not follow the proper procedure under the Civil Practice Law and Rule 2221 (e), and cannot simply "resubmit" a motion for summary judgment, in view of said attorneys' insertion in the motion at bar of the

boiler-plate prayer “and for such other and further relief as this Court seems just and proper,” this Court deems the instant motion to also be one for leave to renew the plaintiffs’ prior motion for summary judgment. As such, the Court, in its discretion, grants leave to renew Umana’s prior motion since Umana has submitted new evidence (transcripts of the parties’ deposition testimony) which were not completed until after the prior motion was decided and was sufficient to change this court’s prior determination (CPLR 2221[e] [2], [3]; *see, Donovan v. Rizzo*, 149 AD3d 1038, 1039; *Chin v. Perrucci*, 136 AD3d 653, 654; *Deleo v. Federal Express Corp.*, 138 AD3d 913, 914). Upon renewal, the motion by Umana for an order pursuant to CPLR 3212 granting summary judgment against the defendants on the issue of liability and dismissing the counterclaim against him is granted for the reasons set forth below (*see, Chin v. Perucci, supra* at 655; *Deleo v. Federal Express Corp., supra* at 914).

This is an action to recover damages for the personal injuries allegedly sustained by the plaintiffs on June 20, 2016, as a result of a motor vehicle collision at the intersection of Sunrise Highway and Hicksville Road in Nassau County when the vehicle operated by defendant James N. Yahner struck the vehicle operated by Umana in the rear while the Umana vehicle was stopped at a red light.

It is well-settled that a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence against the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence (*see, Tutrani v. County of Suffolk, 10 NY3d 906, 908; Lewis v. City of New York, 157 AD3d 879, 880*).

Here, with the benefit of the deposition testimony, Umana has now demonstrated his *prima facie* entitlement to judgment as a matter of law against the defendants/counterclaim plaintiffs on the issues of defendants/counterclaim plaintiffs' liability and Umana's lack of culpable conduct (*see, Lewis v. City of New York, supra; Figueroa v. MTLR Corp., 157 AD3d 861, 862; Pierre v. Demoura, 148 AD3d 736, 737; Chin v. Perucci, supra at 655; Deleo v. Federal Express Corp., supra at 914*).

. Umana and plaintiff Cruz testified at their examinations before trial that prior to driving the vehicle that morning, the plaintiffs conducted a thorough inspection of all of the lights on their vehicle, including the trailer brake lights, and that all of the lights worked properly. Umana also testified that the plaintiffs' vehicle came to a "slow, smooth stop," and stopped for "about ten seconds, maybe a little more" due to a red traffic signal at the intersection of Sunrise Highway and Hicksville

Road. Plaintiff Cruz testified that the plaintiffs' vehicle "stopped at the traffic light" for "about a minute" right before the vehicle driven by defendant James N. Yahner struck the rear of the plaintiffs' vehicle. Moreover, defendant James N. Yahner testified at his deposition that his foot was neither on the brake pedal nor the gas pedal, but was hovering over the brake pedal, when he struck the rear of the Umana vehicle.

In opposition to Umana's *prima facie* showing, however, defendant offending driver's conclusory testimony that he did not see the brake lights on Umana's stopped trailer prior to crashing into the trailer - without the submission of any other evidence of an alleged mechanical defect - does not adequately rebut the inference of negligence and raise a triable issue of fact as to whether the alleged malfunction of the trailer brake lights was a proximate cause of the subject accident (*see, Bene v. Dalessio*, 135 AD3d 679, 680; *Balducci v. Velasquez*, 92 AD3d 626, 629; *Cortes v. Whelan*, 83 AD3d 763, 764; *Maculey v. Elrac Inc.*, 6 AD3d 584, 585; *Gross v. Marc*, 2 AD3d 681; *Rodriguez-Johnson v. Hunt*, 279 AD2d 781). Furthermore, defendant James N. Yahner's failed to explain why he did not maintain a safe following distance (*see, Vehicle and Traffic Law* § 1129[a]; *McLaughlin v. Lunn*, 137 AD3d 757; *Taing v. Drewery*, 100 AD3d 740).

Accordingly, the motion by Umana for an order granting summary judgment

in his favor and against the defendants on the issue of liability, and for an order dismissing the defendants' counterclaim, is granted.

In view of the foregoing, the Court searches the record and grants nonmoving party Cruz summary judgment in his favor on the issue of defendants' liability (CPLR 3212 [b]; see, *Dunham v. Hilco Constr. Co.*, 89 NY2d 425, 429-430; *Theo v. Vasquez*, 136 AD3d 795, 796).

The Justice presiding in the Calendar Control Part ("CCP") shall set the matter down for an assessment of damages rather than a full trial on liability. A copy of this order shall be served on the Clerk of CCP.

The foregoing constitutes the decision and order of this Court.

So ordered.

Dated: **June 21, 2018**

ENTER:



J. S. C.

NON FINAL DISPOSITION

ENTERED

JUN 25 2018

NASSAU COUNTY
COUNTY CLERK'S OFFICE