

Duvalsaint v Yupe-Garcia
2018 NY Slip Op 34379(U)
January 22, 2018
Supreme Court, Rockland County
Docket Number: Index No. 31403/2017
Judge: Sherri L. Eisenpress
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

-----X

MARC E. DUVALSAINT,

Plaintiff,

-against -

JORGE M. YUPE-GARCIA and DAVID H. ROLLS,

Defendants.

-----X

HON. SHERRI L. EISENPRESS, A.J.S.C.

DECISION/ORDER

Index No.
31403/2017

The following papers, numbered 1-3, were read in connection with Plaintiff MARC E. DUVALSAINT's motion for summary judgment:

<u>PAPERS</u>	<u>NUMBERED</u>
MOTION/AFFIRMATION/EXHIBITS (A-C) (MOTION #001)	1
AFFIRMATION IN OPPOSITION/EXHIBIT (A) (MOTION #001)	2
REPLY AFFIRMATION (MOTION #001)	3

Plaintiff MARC E. DUVALSAINT ("Duvalsaint") moves for summary judgment on liability, pursuant to CPLR § 3212, as to his claims against Defendants JORGE M. YUPE-GARCIA ("Yupe-Garcia") and DAVID H. ROLLS arising out of a motor vehicle accident.

A. Background

This personal injury action arises out of a car accident which occurred on July 1, 2016 at the intersection of Route 45 and East Eckerson Road in Ramapo, New York, where Duvalsaint's vehicle struck Yupe-Garcia's vehicle in an intersection after Yupe-Garcia ran a red light.

B. Discussion

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a Court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. *Giuffrida v Citibank Corp., et al.*, 100 NY2d 72 (2003) (citing *Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986)). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. *Lacagnino v Gonzalez*, 306 AD2d 250 (2d Dept 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. *Gonzalez v. 98 Mag Leasing Corp.*, 95 NY2d 124 (2000). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 (1988); *Zuckerman v. City of New York*, 49 NY2d 557 (1980).

According to the certified police report, Duvalsaint approached the intersection while the light was green and proceeded into the intersection where Yupe-Garcia's car drove in front of him causing a collision. (Adams Aff. (Exhibit A)).¹ In addition, the

¹ Duvalsaint's attorney - who does not have personal knowledge of the facts - states that Duvalsaint was "injured in a motor vehicle collision . . . when struck in the rear." (Adams Aff. ¶ 2). Neither Duvalsaint nor Yupe-Garcia allege that Duvalsaint was struck in the rear. In addition, Duvalsaint's

police report also states that while Yupe-Garcia was stopped on Route 45 for "red light, [Yupe-Garcia] *thought* the light turned green so he began to proceed through the intersection . . . [where] Duvalsaint [drove] into the front right side of [his car]." (*Id.* (emphasis added)). Thereafter, Yupe-Garcia was issued a citation for a violation of VTL § 590(1) because of his unlicensed operation of a motor vehicle.

Plaintiff's affidavit is consistent, in all material respects, with the certified police report. (Adams Aff. (Exhibit B)). However, Yupe-Garcia's affidavit, in opposition to the instant motion, is markedly different from his statements in the certified police report. Yupe-Garcia now contends that he had a green light and that Duvalsaint's car ran a red light. (Yupe-Garcia Aff. ¶ 9-10).

Here, Duvalsaint's affidavit and the certified police report establish Duvalsaint's *prima facie* entitlement to summary judgment by demonstrating that Yupe-Garcia failed to yield the right of way, pursuant to VTL §§ 1110(a) & 1142(a). See *Abramov v Miral Corp.*, 24 AD3d 397, 398 (2d Dept 2005) ("Supreme Court properly considered the police accident report which contained [the tortfeasor's] admission immediately following the accident.").

As in *Abramov v Miral Corp.*, 24 AD3d 397, 398 (2d Dept 2005),

attorney refers to the other driver as a female when it is otherwise uncontested that Yupe-Garcia is male.

Yupe-Garcia's recent affidavit - which sets forth a version of events that contradicts his statements in the police report, notably his admission concerning his fault for the accident by proceeding through a red light because he incorrectly "thought the light turned green," - fails to raise a triable issue of fact because it is a "belated attempt to avoid the consequences of his earlier admission by raising a feigned issue." See also *Fontana v Fortunoff*, 246 Ad2d 626, 626-27 (2d Dept 1998) (concluding that the affidavit, in opposition to motion for summary judgment, was a belated attempt to raise feigned factual issue, and was insufficient to defeat summary judgment).

Nor, does Yupe-Garcia's affidavit - which explicitly alleges that Duvalsaint caused the accident by running a red light - give rise to a disputed issue of material fact because it does not explicitly discredit his statement in the certified police report. See *Imamkhodjaev v N. Kartvelishvili*, 44 AD3d 619, 621 (2d Dept 2007) (distinguishing *Abramov* and concluding that defendant's affidavit in opposition to the summary judgment motion created an issue of fact because the defendant "denied making the statement reflected in the police report [concerning his fault for the accident]."

Finally, defendants' purported need to conduct discovery does not "warrant denial of the motion since they already have personal knowledge of the relevant facts." *Abramov*, 24 AD3d at 398 (citation

omitted).

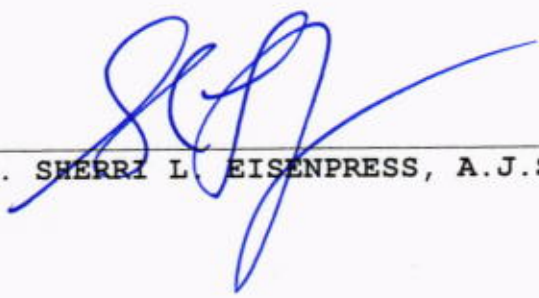
Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment, pursuant to CPLR § 3212, is granted; and it is further

ORDERED that this matter is scheduled for a settlement conference on February 15, 2018.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: New City, New York
January 22, 2018



HON. SHERRI L. EISENPRESS, A.J.S.C.

TO:
All Parties (by e-file)