

Gonzalez v Presti

2019 NY Slip Op 34621(U)

October 28, 2019

Supreme Court, Orange County

Docket Number: Index No. EF003369/19

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

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GILBERT GONZALEZ,

Plaintiff,

- against -

JOSEPH PRESTI,

Defendant.

-----X

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF003369/19

DECISION and ORDER

Motion Date: September 11, 2019

The following papers numbered 1 to 5 were read and considered on a motion by the Plaintiff, pursuant to CPLR §3212, for summary judgment on the issue of liability.

Notice of Motion- Baum Affirmation- Exhibits 1-6	1-3
Affirmation in Opposition- Epstein	4
Affirmation in Reply- Baum	5

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Introduction

The Plaintiff Gilbert Gonzalez commenced this action to recover damages arising from a motor vehicle accident. He now moves for summary judgment on the issue of liability.

The motion is granted.

Factual/Procedural Background

According to the police report of the accident, a vehicle being driven by the Plaintiff

Gilbert Gonzalez was struck from the rear by a vehicle being driven by the Defendant Joseph Presti as it was slowing down for traffic. Presti told the police that there “was a problem with his brakes” which “caus[ed] him to strike” the Plaintiff’s vehicle.

In an affidavit, Gonzalez avers that he was driving westbound on State Highway 9D in Wappinger Falls, when he noticed that traffic ahead was heavy. He “applied [his] brakes slowly and gradually to keep with the flow of traffic.” As he was proceeding “cautiously and slowly,” he was struck from the rear by a vehicle being driven by the Defendant.

In opposition to the motion, counsel for the Defendant, George Epstein II, argues that the motion is premature, as the action was only recently commenced.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the then burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

Relevant to the case at bar, a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence. *Nikolic v. City-Wide Sewer & Drain Service Corp.*, 150 A.D.3d 754 [2nd Dept. 2017]; *Tumminello v. City of New York*, 148 A.D.3d

1084 [2nd Dept. 2017]. A non-negligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017].

However, while a non-negligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead.

Tumminello v. City of New York, 148 A.D.3d 1084 [2nd Dept. 2017].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault.

Davis v. Commack Hotel, LLC, 174 A.D.3d 501 [2nd Dept. 2019].

Pursuant to CPLR 3212(f), a motion for summary judgment may be denied as premature when it appears that facts essential to justify opposition may exist but cannot then be stated.

Aurora Loan Services, LLC v. LaMattina & Associates, Inc., 59 A.D.3d 578 [2nd Dept. 2009].

This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion. *Aurora Loan Services, LLC v. LaMattina & Associates, Inc.*, 59 A.D.3d 578 [2nd Dept. 2009]. However, the proponent must offer an evidentiary basis for a determination that disclosure might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the knowledge and control of the plaintiff. *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943 [2nd Dept. 2019]. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the disclosure process is insufficient to deny the motion. *Cortes v. Whelan*, 83 A.D.3d 763, 922

N.Y.S.2d 419 [2nd Dept. 2011].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that the Defendant was negligent in the happening of the accident.

In opposition, the Defendant failed to raise a triable issue of fact.

Further, the Defendant failed to demonstrate that the motion was premature.

Thus, the Plaintiff is granted summary judgment on the issue of liability.

Accordingly, and for the reasons cited herein, it is hereby,

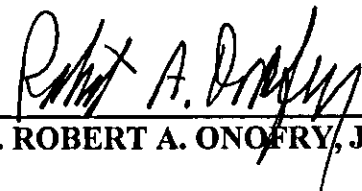
ORDERED, that the motion is granted; and it is further,

ORDERED that the parties, through respective counsel, are directed to, and shall, appear for a Status Conference on Tuesday, November 26, 2019, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York, to determine scheduling and how the matter shall proceed on the issue of damages.

The foregoing constitutes the decision and order of the court.

Dated: October 28, 2019
Goshen, New York

E N T E R


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