

Johnson v Venegas

2019 NY Slip Op 34695(U)

October 8, 2019

Supreme Court, Westchester County

Docket Number: Index No. 57672/2019

Judge: John P. Colangelo

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This opinion is uncorrected and not selected for official publication.

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
RAYON JOHNSON,

Plaintiff,

-against-

DECISION AND ORDER

Index No. 57672/2019

Motion Sequence #1

GABRIELLE LEVIN VENEGAS and MATTHEW
VENEGAS,

Defendants.

-----X
COLANGELO, J.

The following papers were read on this motion by Plaintiff for an Order granting partial summary judgment on the issue of liability and the lack of Plaintiff's culpable conduct on the issue of liability, and dismissing Defendants' affirmative defenses of comparative negligence as against Plaintiff:

	NYSCEF
Notice of Motion-Affirmation-Exhibits 1-3	9-13
Affirmation in Opposition	15
Reply Affirmation	16

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

Plaintiff Rayon Johnson ("Plaintiff") brings the instant motion for an Order granting partial summary judgment pursuant to CPLR §3212 on the issue of liability and the lack of his culpable conduct on the issue of liability, and for an Order dismissing the affirmative defenses contained in the Answer of Defendants Gabrielle Levin Venegas and Matthew Venegas ("Defendants"). The Affirmation of Plaintiff's counsel, David S. Levy, Esq. as well as the

Certified Police Accident Report and Plaintiff's Affidavit are submitted in support of the instant motion. (Pl. Exhs 1 & 2).

Plaintiff's Affidavit states that on October 28, 2017 at approximately 4:06 AM, he was operating his vehicle bearing NY license plate number FJD3752 on the southbound Interstate 95 (I-95) in the Village of Mamaroneck in the far right lane. While driving, his vehicle was suddenly struck in the rear by a vehicle bearing New York license plate DVK5223, which was owned by Defendant Gabrielle Levin Venegas and being operated by Defendant Matthew Venegas. (Pl. Exh. 2, ¶¶3 & 4). Plaintiff was admitted to Montefiore New Rochelle Hospital for treatment following the accident. (*Id.* ¶5).

The Police Accident Report states that V2 (Plaintiff's vehicle) was traveling southbound on I-95 in the far right lane when rear-ended by V1 (Venegas vehicle).

This action was commenced by the filing of a Summons and Verified Complaint on May 13, 2019. Issue was joined by service of Defendants' Answer on June 3, 2019 (Pl. Exh. 3).

The First Affirmative Defense in the Answer alleges that "[a]ny damages sustained by the Plaintiff were caused by the culpable conduct of Plaintiff, including contributory negligence or assumption of risk, and not by the culpable conduct or negligence of the [Defendants]".

The Second Affirmative Defense alleges that "[u]pon information and belief, Plaintiff failed to use or misused seat belts, and thereby contributed to the alleged injuries."

Defendants oppose the instant motion and takes the position that there are triable issues of fact. Further, Defendants argue that the motion is premature as there has been no discovery in this case. This Court disagrees.

CPLR 3212(b) states in pertinent part that a motion for summary judgement "shall be

granted" if, upon all of papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgement in favor of any party."

In *Andre v Pomeroy*, 35 N.Y.2d 361, 364 (1974), the Court of Appeals stated:

"[s]ummary judgement is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law...when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated."

The proponent of a summary judgement motion must make a prima facie showing of entitlement to judgement as a matter of law by tendering sufficient evidence to demonstrate the absence of material issues of fact. *Weingrad v. New York Medical Center*, 64 N.Y.2d 851, 853 (1986). Once such showing has been made, the burden shifts to the party opposing the motion to produce admissible evidentiary proof sufficient to establish the existence of material issues of fact that require a trial of action. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). No opposition has been submitted by Defendant to the motion.

It is well-established that "[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Williams v. Spencer-Hall*, 113 A.D.3d 759 (2d Dept. 2014); *Volpe v. Limoncelli*, 74 A.D.3d 795 (2d Dept. 2010); *Klopchin v. Masri*, 45 A.D.3d 737 (2d Dept. 2007); *Chepel v. Meyers*, 306 A.D.2d 235 (2d Dept. 2003); *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 908

(2008); *Clarke v. Phillips*, 112 A.D.3d 872 (2d Dept. 2013).

This Court is satisfied that Plaintiff has made a prima facie showing of entitlement to judgement as a matter of law by tendering sufficient evidence to demonstrate the absence of material issues of fact as to the occurrence of the accident. Defendant has failed to produce any evidence that issues of material facts exist that require a trial on the issue of liability. Accordingly, Plaintiffs' motion for summary judgment on the issue of liability is granted.

Similarly, Plaintiffs' motion to dismiss Defendants' First Affirmative Defenses is granted. Plaintiff has tendered sufficient evidence to establish her *prima facie* entitlement to judgment as a matter of law on the issue of liability.

A Plaintiff is no longer required to demonstrate the absence of her own comparative negligence to be entitled to summary judgment on the issue of liability, and does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault, (*Harrinarain v. Sisters of St. Josphph*, 173 A.D.3d 983, 984 [2d Dept. 2019]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 325 [2018]), a plaintiff still must establish a defendant's liability as a matter of law. In *Harrinarain v. Sisters of St. Josphph*, 173 A.D.3d 983, the Second Department found that the plaintiff had established her *prima facie* entitlement to judgment as a matter of law on the issue of liability by demonstrating that the defendant driver negligently drove into the intersection on a street controlled by a stop sign without yielding the right-of-way to the plaintiff's vehicle (see Vehicle and Traffic Law § 1142[a]) through her own affidavit and a copy of a police accident report which contained defendant driver's admission that she failed to stop at the stop sign before entering the intersection.

In this case, Plaintiff has established his entitlement to judgment as a matter of law based

upon the *prima facie* case of negligence against the operator of the rear vehicle.

Based upon the foregoing, it is hereby


ORDERED that Plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that the First Affirmative Defense set forth in Defendants' Verified Answer is dismissed; and it is further

ORDERED that all parties and counsel shall appear at the Settlement Conference Part, courtroom 1600 on November 26, 2019 at 9:15 am to schedule a trial on damages.

The foregoing constitutes the Decision and Order of the Court.

Dated: October 8, 2019
White Plains, New York



HONORABLE JOHN P. COLANGELO, J.S.C