

Pico v Bar-Hanin

2019 NY Slip Op 34877(U)

October 2, 2019

Supreme Court, Bronx County

Docket Number: Index No. 33094/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 15



PICO, MARLON

Index No. 0033094/2018E

-against-

Hon. MARYANN BRIGANTTI,

BAR-HANIN, YAKOV

Justice Supreme Court

The following papers numbered 1 to 9 Read on this motion, (Seq. No. 1) for
SUMMARY JUDGMENT LIABILITY, noticed on **February 05 2019**. Submitted March 22, 2019

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed ⁱⁱ	No(s). 1-4
Answering Affidavit and Exhibits ^{Δ opp}	No(s). 2-3, 4-5
Replying Affidavit and Exhibits ^{ii Reply}	No(s). 6-7, 8-9

Upon the foregoing papers, it is ordered that this motion is

Plaintiff's Motion is decided in the annexed memorandum decision and order.

Motion is Respectfully Referred to Justice: _____
Dated: _____

Dated: 10/2 2019

Hon. Mary Ann Briganti
MARYANN BRIGANTTI, J.S.C.

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
MARLON PICO,

Plaintiff,

Index No.: 33094/2018E

-against-

YAKOV BAR-HANIN, JAVIER MEDINA &
ANA MARTINEZ,

Defendants.

-----X
HON. MARY ANN BRIGANTTI:

Plaintiff, MARLON PICO, moves for partial summary judgment in his favor on the issue of the liability of the Defendants, and his freedom from comparative fault for the happening of the subject accident.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff PICO in a three-car motor vehicle accident, which occurred on or about June 28, 2018 on Bruckner Boulevard, at its intersection with Bronx River Avenue, in Bronx, NY. Plaintiff was the operator of the front-most vehicle. Defendants YAKOV BAR-HANIN and JAVIER MEDINA were the owner and operator, respectively, of the middle vehicle. Defendant ANA MARTINEZ was the owner of the rear-most vehicle.

In support of his Motion, Plaintiff's submissions include his Affidavit and the pleadings.

According to Plaintiff, he was stopped for several seconds on Bruckner Boulevard, at a red traffic light, when his vehicle was suddenly hit in the rear by

the vehicle operated by Defendant MEDINA, “which had also been hit in the rear by Defendant, ANA MARTINEZ’s, vehicle” (*see* Plaintiff PICO Affidavit, dated November 16, 2019).

Vehicle and Traffic Law § 1129 (a) “Following too closely”, provides that: “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

“It is well settled that a "rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" ” (*Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *see Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]). In this regard, “a driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

“Under the law applicable to rear end collisions, a presumption of negligence is established by proof that a stopped car was struck in the rear” (*Passos v MTA Bus Co.*, 129 AD3d 481, 481 [1st Dept 2015]). “When such a rear-end collision occurs, the injured occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a non-negligent explanation, in evidentiary form, for the collision”

(*Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1999]; see *Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]).

Accordingly, Plaintiff PICO made a prima facie showing of his entitlement to partial summary judgment on the issue of liability by establishing that Defendant ANA MARTINEZ's vehicle rear-ended Defendant BAT-HANIN/MEDINA's vehicle, and that Defendant BAT-HANIN/MEDINA's vehicle rear-ended Plaintiff's vehicle – which was stopped at the light.

Thus, Movant “shift[ed] the burden to defendant[s] of advancing a non-negligent explanation for the accident ... [“A collision with a stationary vehicle amounts to prima facie evidence of negligence on the part of the operator of the moving vehicle”]” (*Rodriguez v City of NY*, 161 AD3d 575, 577 [1st Dept 2018]).

Herein, Defendants, persons with knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, have not submitted their own affidavits.

It is well-established that where the submission on the part of parties opposing a summary judgment motion “consisted only of the bare affirmation of [their] ... attorney who demonstrated no personal knowledge of the manner in which the accident occurred [, s]uch an affirmation by counsel is without evidentiary value and thus unavailing” (*Zuckerman v New York*, 49 NY2d 557,

563 [1980]). In *Zuckerman*, as here, the opponents of the motion proffered no affidavit made by a party or eyewitness having knowledge of the relevant facts. There was no statement as to the substance of any alleged testimony (*Zuckerman v New York*, 49 NY2d at 563).

Defendants' Counsel argue that the motion is premature, insofar as discovery has not been completed. In this regard, CPLR 3212 (f), "Facts unavailable to opposing party" provides that: "Should it appear from **affidavits** submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just." [emphasis added]

However, the "mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion" (*Flores v. City of New York*, 66 AD3d 599, 600 [1st Dept. 2009]).

Accordingly, Plaintiff PICO's Motion, for partial summary judgment in his favor on liability as against Defendants, is granted, to the extent that Defendants' vehicles are found negligent and that negligence was a substantial factor in causing the accident; and Plaintiff is found free from comparative fault for the

happening of the accident.¹

This constitutes the decision and order of this Court.

Dated: 10/2, 2019


HON. MARY ANN BRIGANTTI, J.S.C.

¹ However, this Court makes no determination as to other issues herein, such as the percentage of comparative fault borne by each Defendant for the happening of the accident; whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants; and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.