

<b>Minaya-Nunez v Rivera</b>
2020 NY Slip Op 30652(U)
February 6, 2020
Supreme Court, Kings County
Docket Number: 507032/2019
Judge: Bruce M. Balter
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At IAS Part 13 of the Supreme Court of the State of New York, Kings County, 320 Jay Street, Brooklyn, New York 11201, on the 6th day of February 2020.

PRESENT:

HON. BRUCE M. BALTER,  
J.S.C.

X

DECISION /ORDER

JUANA C. MINAYA-NUNEZ and MARIANO D. RODRIGEZ

Plaintiffs

-against-

Index No.: 507032/2019  
Motion Date: 02/04/2020  
Motion Cal. No: 27  
Motion Sequence: 1

JAMES RIVERA, U-HAUL NEIGHBORHOOD DEALER, ANDREW'S ROAD SERVICE INC. and NICHOLAS R. RODRIGUEZ,

Defendants.

X

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Motion by Defendant NICHOLAS R. RODRIGUEZ for an Order pursuant to CPLR §3212 granting summary judgment on the issue of liability upon the ground that no triable issue of fact exists with respect to Defendants JAMES RIVERA and ANDREW'S ROAD SERVICE INC's negligence.

Plaintiffs oppose the motion.

FACTS AND PROCEDURAL HISTORY

This is an action brought to recover damages for personal injuries sustained by the plaintiff, on December 10, 2017, on the Scholes Street, in County of Kings. Plaintiff commenced this action by filing and service of a Summons and Verified Complaint on or about March 29, 2019. Issue was joined by the service of an Answer and Combined Demands on behalf of defendant ANDREW'S ROAD SERVICE INC and UHAUL NEIGHBORHOOD DEALER on May 10, 2019. Issue was Joined by service of an Answer and Combined Demands on behalf of defendant NICHOLAS R. RODRIGUEZ on or about May 15, 2019.

The within action arises out of a two-vehicle accident which occurred on December 10, 2017, on the Scholes Street in Kings County, New York. Vehicle #1 is a 2007 Ford vehicle

hearing New York State license plate HPU7506 owned and operated by defendant NICHOLAS R. RODRIGUEZ, vehicle #2 is a 2017 GMC bearing Arizona license plate AH72987 owned by UHAUL NEIGHBORHOOD DEALER and operated by defendant JAMES RIVERA. The complaint alleges that the accident was caused by the negligence of the defendant NICHOLAS R. RODRIGUEZ in the ownership and operation.

Movant maintains that it is undisputed that the vehicle owned and operated by defendant NICHOLAS R. RODRIGUEZ was stopped, and was struck in the rear by co-defendant U-HAUL NEIGHBORHOOD DEALER and operated by co-defendant JAMES RIVERA. In support of the motion Defendant submits an affidavit. Plaintiffs maintain that the motion is premature.

### STATUTORY AUTHORITY AND APPLICABLE CASE LAW

Pursuant to Vehicle and Traffic Law §1129, a motor vehicle operator has the duty to maintain a safe distance between his vehicle and those ahead of it. See *McCarthy v. Miller*, 139 A.D.2d 500, 526 N.Y.S.2d 848 (2<sup>nd</sup> Dept.1988); *Silberman v. Surrey Cadillac Limousine Service, Inc.*, 109 A.D.2d 833, 486 N.Y.S.2d 537 (2<sup>nd</sup> Dept.1985).) A driver approaching another vehicle from the rear is bound to maintain a reasonable safe rate of speed, maintain control of his vehicle, and use reasonable care to avoid colliding with the other vehicle. The Appellate Division has held that regardless of whether the preceding driver was stopped or rolling to a stop (the following driver) was under a duty to maintain a safe distance between the two vehicles, and his failure to do so, in the absence of an adequate explanation, constituted negligence as a matter of law which caused the accident. See *Barba v. Best Sec. Corp.*, 235 A.D.2d 381, 652 N.Y.S.2d 71 (2<sup>nd</sup> Dept. 1997); *Rebecchi v. Whitmore* 172 A.D.2d 600, 568 N.Y.S.2d423 (2<sup>nd</sup> Dept.1991).

It is well settled 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. *Appolonia v. Bonse* 92 A.D.3d 1170, 938 N.Y.S.2d 668, (2<sup>nd</sup> Dept. 2012); *Perez v. Roberts* 91 A.D.3d 620, 936 N.Y.S.2d 259 (2<sup>nd</sup> Dept. 2012); *Zweeres v. Mated* 2012 NY Slip Op 3184 (2<sup>nd</sup> Dept. 2012); *Pollard v. Independent Beauty & Barber Supply Co.* 2012 NY Slip Op 2659 (2<sup>nd</sup> Dept. 2012); *Balducci v. Velasquez* 92 A.D. 3d 626, 938 N.Y.S.2d 178 (2<sup>nd</sup> Dept. 2012); *Giangrasso v. Callahan* 87 A.D.3d 521, 928 N.Y.S.2d68 (2<sup>nd</sup> Dept. 2011); *Plummer v. Nourddine* 82 A.D.3d 1069, 919 N.Y.S.2d 187 (2<sup>nd</sup> Dept. 2011); *Parra v. Hughes* 79 A.D.2d 1113, 914 NY.S.2d 249 (2<sup>nd</sup> Dept. 2010); *Blasso v. Parente* 79 A.D.3d.923, 913 N.Y.S.2d 306 (2<sup>nd</sup> Dept. 2010); *Bernier v. Torres* 79 A.D.3d 776, 913 N.Y.S.2d 299 (2<sup>nd</sup> Dept. 2010), *Ortiz v. Fage USA Corp.* 69 A.D.2d 914, 893 N.Y.S.2d 270 (2<sup>nd</sup> Dept. 2010).

It is well-settled that a motion for summary judgment is only considered premature where "facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant." *Pina V. Merolla*, 34 A.D.3d 663, 663, 824 N.Y.S.2d 411, 413 (2<sup>nd</sup> Dept. 2006). In *Fenko v. Mealing*, 43 A.D.2d 856, 841 N.Y.S.2d 378 (2<sup>nd</sup> Dept. 2007), the

Court held that "the defendant's purported need to conduct discovery did not warrant denial of the motion since they already had personal knowledge of the relevant facts." *Id.* at 856, 379. The Courts have explicitly stated, "Defendants' need for discovery does not include depositions of its own clients." *Caetano v. 17 Street Development N.Y. Carp.*, 2008 N.Y. Slip Op. 32878U.

### ANALYSIS

Here, Plaintiffs request that discovery be completed before the Court considers the instant motion.. It is well-settled that the "mere hope that evidence sufficient to defeat the motion may be uncovered during the discovery process was insufficient to defeat the motion." *Piltser v. Donna Lee Management Corp.*, 29 A.D.3d 973, 816 N.Y.S.2d 543 (2<sup>nd</sup> Dept. 2006). See also *Pacheco v. Halstead Communications, Ltd.*, 90 A.D.3d 877, 879, 935 N.Y.S.2d 595, 597 (2<sup>nd</sup> Dept. 2011), *Fenko v. Mealing, supra*, *Arhizu v. REM Transportation, Inc.*, 20 A.D.3d 375, 799 N.Y.S.2d 231 (2<sup>nd</sup> Dept. 2005).

Based upon the sworn affidavit of the defendant NICHOLAS R. RIVERA a *prima facie* entitlement to judgment as a matter of law on the issue of liability has been established. See *Jumandeo v. Franks*, 56 A.D.3d 614, 867 N.Y.S.2d 541 (2<sup>nd</sup> Dept. 2008). See also, *Harrington v. Kern* 52 A.D.3d 473, 859 N.Y.S.2d 480 (2<sup>nd</sup> Dept. 2008) See *Johnston v. Spoto*, 47 A.D.3d 888, 850 N.Y.S.2d 204, (2<sup>nd</sup> Dept. 2008); *Vavoulis v. Adler*, 43 A.D.3d 1154, 842 N.Y.S.2d 526 (2<sup>nd</sup> Dept; 2007); *Rainford v. Han*, 18 A.D.3d 638, 795 N.Y.S.2d 645 (2<sup>nd</sup> Dept. 2005). The burden now shifts to the driver of the vehicle in the rear to rebut the inference of negligence with a non-negligent explanation for the collision. See *Brant v. Senatobia Operating Corp.* 269 A.D.2d 483, 703 N.Y.S.2d 245 (2<sup>nd</sup> Dept. 2000). "If the operator cannot come forward with any evidence to rebut the inference of negligence, the (defendant) may properly be awarded judgment as a matter of law." See *Barile v. Lazzarini et al*, 222 A.D.2D 636, 635 N.YS.2d 694 (2<sup>nd</sup> Dept 1995). In response to the instant motion, Plaintiffs have submitted no admissible evidence to refute Defendant NICHOLAS RODRIGUEZ's motion. Plaintiffs have not submitted an Affidavit of either plaintiff or other individual with personal knowledge of the facts and circumstances of the subject accident. Instead, plaintiffs have merely submitted an Affirmation of counsel, who has no personal knowledge of the subject accident. Here, plaintiffs merely rely upon speculation and conjecture to obfuscate the issues before the court. In relying only upon unsupported allegations, plaintiffs have failed to raise a triable issue of fact.

After oral argument and a careful review of the motion and opposition presented to the Court, the Court finds that Defendant NICHOLAS RODRIGUEZ has proven that he was in no way negligent in the happening of this accident, a fact that no other party has refuted with any admissible evidence. As defendant has established his entitlement to the relief requested as a matter of law, Defendant, NICHOLAS RODRIGUEZ is entitled to summary judgment as to liability.

CONCLUSION

Accordingly, Defendant s NICHOLAS RODRIGUEZ's motion for Summary Judgment dismissing plaintiffs Complaint and all cross-claims on the grounds that there are no material questions of law or fact on the issue of liability is GRANTED. This Constitutes the Decision and Order of this Court.

February 6, 2020



BRUCE M. BALTER, J.S.C.

HON. BRUCE M. BALTER  
JUSTICE SUPREME COURT

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