

Reyes v Gonzalez

2020 NY Slip Op 30862(U)

March 11, 2020

Supreme Court, Kings County

Docket Number: 502705/2016

Judge: Lara J. Genovesi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 11th day of March 2020.

PRESENT:

HON. LARA J. GENOVESI,
J.S.C.

-----X
GUSTAVO REYES,

Index No.: 502705/2016

Plaintiff,

DECISION & ORDER

-against-

FRANKLIN GONZALEZ and
IONNAIS MANTZIARAS,

Defendants.

-----X

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	_____ 56-64 _____
Opposing Affidavits (Affirmations) _____	_____ 65-74 _____
Reply Affidavits (Affirmations) _____	_____

Defendant, Franklin Gonzalez, moves by notice of motion, sequence number five, for summary judgment, pursuant to CPLR § 3212, on the issue of liability, dismissing the complaint, all cross claims and for such further and other relief as may be just and proper. Plaintiff, Gustavo Reyes opposes this motion. Defendant, Ionnais Mantziaras does not oppose this motion.

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Plaintiff allegedly sustained personal injuries on June 15, 2013, in a two-car rear end collision. Plaintiff, Gustavo Reyes (Reyes) was a passenger in the vehicle owned and operated by defendant Franklin Gonzalez (Gonzalez). The Gonzalez vehicle was traveling on 4th Avenue, near the intersection with 43rd Street, when it stopped for a red light. While the Gonzalez vehicle was stopped, it was struck in the rear by the front of the vehicle owned and operated by defendant Ionnais Mantziaras (Mantziaras)¹.

This action was commenced by the filing of the summons and complaint on February 26, 2016. Issue was joined by Gonzalez on April 5, 2016, and by Mantziaras on March 24, 2016. The note of issue was filed on February 11, 2019. Defendant Mantziaras filed a motion to strike the note of issue and extend time to file a motion for summary judgment on February 28, 2019. The Hon. Lizette Colon denied this motion, without prejudice, on April 2, 2019. The instant motion was filed on August 21, 2019.

“CPLR 3212(a) provides that “[i]f no such date is set by the court, [a motion for summary judgment] shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown” (*see Brill v. City of New York*, 2 N.Y.3d at 651, 781 N.Y.S.2d 261, 814 N.E.2d 431).” (*Wells Fargo Bank, NA v. Apt, No. – Ad3d- [2 Dept., 2020]*). However, pursuant to the Uniform Civil Term Rules of the Supreme Court, Kings County, a motion for summary judgment must be made no later than 60 days after the filing of the note of issue, unless leave of the court is obtained on good cause shown (*see Goldin v. New York and Presbyt. Hosp.*, 112 AD3d

¹ Although defendant is sued as Ionnais, his answer and deposition transcript state that his name is Ioannis.

578, 579 [2 Dept., 2013], citing Kings County Supreme Court Uniform Civil Term Rules, Part C, Rule 6; *see also Lyebedyev v. Hoffman*, 84 A.D.3d 751, 921 N.Y.S.2d 866 [2 Dept., 2011]).

In the instant matter, the note of issue was filed on February 11, 2019, and the defendants' motion was filed on August 21, 2019, over four months late. Defendants' did not seek leave to make a late summary judgment motion or demonstrate good cause for the delay (*see* CPLR 3212 [a]; *Ade v. City of New York*, 164 AD3d 1198, [2 Dept., 2018], citing *Courtview Owners Corp. v. Courtview Holding B.V.*, 113 AD3d 722 [2 Dept., 2014]). In the absence of a showing of good cause for the delay in filing a motion for summary judgment, the court has no discretion to entertain even a meritorious, non-prejudicial motion for summary judgment (*see Bivona v. Bob's Discount Furniture of NY, LLC*, 90 AD3d 796 [2 Dept., 2011]; *see Brill v. City of New York*, 2 NY3d 648 [2004]).

Accordingly, defendant Gonzalez' motion for summary judgment on the issue of liability, motion sequence five, dismissing the complaint and all cross claims is denied.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

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