

Rangel v Motor Veh. Acc. Indem. Corp.

2020 NY Slip Op 32487(U)

June 17, 2020

Supreme Court, Bronx County

Docket Number: 27890/2017E

Judge: Mary Ann Brigantti

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ISIDRO RANGEL,

Plaintiff,

-against-

Index No.: 27890/2017E

MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

Defendant.

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MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

Third-Party Plaintiff,

-against-

JESUS E. TOVAR and ANDRES F. TOVAR,

Third-Party Defendants.

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HON. MARY ANN BRIGANTTI:

Defendant MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

(referred to herein as MVAIC) moves to vacate this Court’s Order, dated December 12, 2019, pursuant to CPLR 5015(a). By this Court’s aforesaid Order, this Court had granted summary judgment to Third-Party Defendants, JESUS E. TOVAR and ANDRES F. TOVAR, dismissing the third-party action as against them. The motion was unopposed, and had been granted on default.

CPLR R 5015(a)“Relief from judgment or order” provides that:

“The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

- 1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving

party, or, if the moving party has entered the judgment or order, within one year after such entry”

This is an action to recover damages for alleged personal injuries sustained by Plaintiff, ISIDRO RANGEL, a pedestrian, in a “hit and run” motor vehicle accident, which occurred on, or about, November 24, 2016, at 12:20 p.m., in the afternoon, in the intersection of Britton Street, and Judge Street, in Queens County, New York. Plaintiff was a pedestrian who was struck, on the sidewalk, by an unidentified vehicle, described as a white Audi, which fled from the scene of this “hit and run” accident.

MVAIC is a not-for-profit corporation created to provide benefits to innocent victims of motor vehicle accidents for whom there is no available insurance. Plaintiff was granted leave to commence this action against MVAIC, since Plaintiff is a covered person within the meaning of the Insurance Law.

Defendant MVAIC commenced a third-party action as against the driver and owner, JESUS E. TOVAR and ANDRES F. TOVAR, respectively, of another vehicle that was, also, struck by the same “hit and run” vehicle. While the subject white Audi was being pursued by the Police, it struck the TOVAR vehicle in the intersection, Plaintiff on the sidewalk and two parked cars.

In support of its Motion, MVAIC includes TOVAR’s original motion papers. Those motion submissions include the pleadings, the Police Accident Report, and the deposition transcripts of the Plaintiff RANGEL and of Third-Party Defendant JESUS E.

TOVAR. No new testimony or affidavits were introduced in support of the instant motion. Plaintiff does not submit any papers on the motion.

Defendant MVAIC seeks the vacatur of the Court's prior Order, pursuant to CPLR 5015(a)(1), essentially maintaining that its "law office failure" was an excuse for its default in submitting opposition papers, and that there is merit to its position that there are questions of fact as to the TOVAR vehicle's liability.

As far as its "law office failure", MVAIC alleges that it failed to submit opposition papers to TOVAR's motion, submitted in August 2019, because Counsel never received the e-filed motion papers, since, due to "oversight, nobody was ever registered on the Court's e-filing website for this matter subsequent to the" departure of an attorney from their firm, in March 2018 -- more than one year prior to the making of the subject motion.

In a recent case on the excuse of "law office failure", the Court held that:

"To vacate its default in opposing plaintiff's motion... defendant was required to demonstrate both a reasonable excuse for the default and a meritorious defense (*see* CPLR 5015 [a]; *QRT Assoc., Inc. v Mouzouris*, 40 AD3d 326, 836 NYS2d 62 [2007]; *Mutual Mar. Off., Inc. v Joy Constr. Corp.*, 39 AD3d 417, 419, 835 NYS2d 88 [2007]). While a default resulting from **law office failure** may be excused (CPLR 2005), defendant's **bare denial of receipt of the motion papers**, and of a subsequent letter from plaintiff's counsel referring to the pending motion, **was insufficient** to rebut the proof that the motion papers were properly mailed and the presumption of receipt arising from that proof (*see Kihl v Pfeffer*, 94 NY2d 118, 122, 722 NE2d 55, 700 NYS2d 87 [1999]; *Grieco v Walker*, 8 AD3d 66, 777 NYS2d 650 [2004]). Since defendant did not submit an affidavit of merit or argue that the deposition testimony in the record supported

a valid defense to this slip and fall action based on lack of notice of a dangerous condition, the motion court properly determined that defendant had not shown a meritorious defense to the complaint” [emphasis added] (*Bryant v NY City Hous. Auth.*, 69 AD3d 488, 489 [1st Dept 2010]).

Nevertheless, even assuming that MVAIC’s excuse for failing to oppose the motion would be deemed sufficient, this Court’s prior Order need not be vacated unless there is merit to MVAIC’s position that there are genuine questions of fact as to liability on the part of the TOVAR vehicle.

The relevant facts are summarized by the Court in its prior Order, and no new testimony or affidavits were submitted herein. This Court held as follows:

“Jesus [TOVAR] testified that at the time of the accident, he stopped for a stop sign at the subject intersection, checked for traffic and proceeded forward when another vehicle --a white Audi-- came from around the corner at a “great speed” and impacted him on his front bumper. The car then hit two cars at the corner, and a pedestrian before leaving the scene. Jesus also testified that ... a stop sign controlled both streets at the intersection where the accident occurred. Plaintiff testified that he was on the sidewalk at the subject intersection when he was struck by a vehicle that went on to strike other park vehicles. Jesus, who avers that he stopped and checked for traffic before moving forward, was entitled to anticipate that the other driver would stop at his stop sign ... [citations omitted]. There is nothing on this record to refute the version of events presented by [third-party]TOVAR Defendants and Plaintiff. Accordingly, TOVAR Defendants’ motion for summary judgment is granted and the third-party complaint is dismissed”.

(See this Court’s Order, dated Dec. 12, 2019).

It is noted that TOVAR, also, testified, in relevant part, that the police soon arrived on the scene of the accident, because they had been pursuing the occupant of the white Audi for having committed a crime. Thus, while fleeing at high speed from

the police, the white Audi struck TOVAR's vehicle in the intersection, Plaintiff RANGEL on the sidewalk and two parked cars.

Under the circumstances, MVAIC's motion is denied and the Court adheres to its original Order. This constitutes the decision and Order of this Court.

Dated: 6/17, 2020



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