

Zapata v Santiago

2020 NY Slip Op 32845(U)

August 31, 2020

Supreme Court, New York County

Docket Number: 157013/2019

Judge: Adam Silvera

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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JOHN ZAPATA, ORIS RAPALO-BARAHONA, RAUL MAZARIEGO

INDEX NO. 157013/2019

MOTION DATE 06/10/2020

Plaintiff,

MOTION SEQ. NO. 002

- v -

JASON SANTIAGO, CLASSIC RECYCLING NEW YORK CORP.,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ORDERED that plaintiffs motion for summary judgment on the issue of liability in favor of plaintiffs as against defendants and to strike defendants First Affirmative defense that alleges that the amount recoverable by plaintiff should be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages, including, but not limited to, plaintiff's contributory negligence and/or assumption of the risk is granted.

This matter stems from a motor vehicle accident which occurred on March 12, 2019, at the intersection of East 19th Street and Park Avenue South in the County, City and State of New York when a vehicle operated by plaintiff, Oris Rapalo Barahona and transporting plaintiff Raul Mazariego and plaintiff John Zapata, was struck in the rear while stopped by a vehicle operated by defendant, Jason Santiago and owned by defendant Classic Recycling New York and allegedly led to the serious injury of plaintiffs.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]). An innocent passenger in one of the vehicles who cannot possibly be found at fault under either defendant’s version of the accident, is entitled to partial summary judgment and the right of said passenger is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicle (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206 [1st Dep’t 2001]; *see also Mello v Narco Cab Corp* 105 Ad3d 634 [1st Dep’t 2013]).

Plaintiffs submit the affidavit of John Zapata and an affidavit from a qualified translator (Mot, Exh F & G). Plaintiff testified that the vehicle in which plaintiff was a passenger was stopped at a red light for approximately thirty (30) seconds and was entirely within the right lane at the time of the accident when it was struck in the rear by defendants vehicle (Mot, Exh F, ¶ 4-5). Thus, plaintiffs have made out a prima facie case of negligence, and the burden shifts to defendants to raise a triable issue of fact.

In opposition defendant assert that the instant case is premature for summary judgment and that plaintiff's affidavit is inadmissible as it is accompanied by a defective translator affidavit. As to defendants' assertion that the instant case is premature for summary judgment, the Court has continuously held that summary judgment is permissible notwithstanding the fact that depositions have yet to be held (*Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dep't 2010]; *see also Rosario v Vasquez* 93 AD3d 509 [1st Dep't 2012]).

In regards to defendants' assertion that plaintiff's affidavit is inadmissible, the court finds that the affidavit is not defective. The Appellate Division First Department has held that CPLR 2101(b) does not require that a translator affidavit include an "itemized list of qualifications" *National Puerto Rican Day Parade, Inc. v. Casa Pubs., Inc.*, 79 A.D.3d 592 [1st Dept 2010] [finding that a certification that the translation was done by a professional translator competent in both languages is sufficient]). Here plaintiff's translator stated that he is fluent in English and Spanish and is thus proper before this Court. Thus, defendants have failed to raise an issue of fact or non-negligent explanation for the rear-end collision and plaintiff is entitled to summary judgment on the issue of liability as against defendants.

Accordingly, it is

ORDERED that plaintiffs' motion for summary judgment on the issue of liability in favor of plaintiffs and against defendants is granted; and it is further

ORDERED that the branch of plaintiffs' motion to dismiss defendants' affirmative defenses related to comparative negligence of plaintiff is granted; and it is further

ORDERED that within 30 days of entry, plaintiffs shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.



8/31/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE