

Mendez-Hernandez v Chidambaram
2020 NY Slip Op 35119(U)
October 8, 2020
Supreme Court, Westchester County
Docket Number: Index No. 51982/2019
Judge: Terry Jane Ruderman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
JORGE MENDEZ-HERNANDEZ,

Plaintiff,

-against-

ARUN CHIDAMBARAM,

Defendant.
-----X

RUDERMAN, J.

DECISION and ORDER
Motion Sequence No. 1
Index No. 51982/2019

The following papers were considered in connection with plaintiff's unopposed motion for an order granting him summary judgment on the issue of liability, and striking defendant's first affirmative defense (culpable conduct) and fourth affirmative defense (failure to wear a seatbelt):

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits 1 - 9	1

This personal injury action involves a collision that occurred on May 24, 2018, at approximately 4:45 p.m. According to plaintiff's affidavit, he was driving northbound on Worthington Road in Greenburgh, New York, approaching the intersection with County Club Road, with no traffic control devices restricting his travel, when a vehicle heading toward him, on Worthington Road southbound, made a sudden left turn onto Country Club Road, and the two vehicles collided. The southbound vehicle was owned and operated by defendant Arun Chidambaram. The certified police report submitted with the motion indicates that defendant told the reporting police officer that the collision was his fault, and that he became distracted

when attempting to make a left turn, and he turned into the path of plaintiff's vehicle.

Plaintiff now moves for an order pursuant to CPLR 3212 granting him partial summary judgment on the issue of liability against defendant, contending that he had the right of way and defendant was negligent based on his violation of Vehicle and Traffic Law § 1141. No opposition has been submitted to the motion, and defendant's deposition testimony, while vague, does not establish a basis for a claim of non-negligence. Defendant's answer to the complaint includes the affirmative defense of culpable conduct on plaintiff's part.

Analysis

In order to be awarded summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, with evidentiary proof in admissible form (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). The evidence must be viewed in the light most favorable to the opponents of the motion, and every favorable inference must be afforded to the non-movants (see *Gardella v Remizov*, 144 AD3d 977, 979 [2d Dept 2016]).

Plaintiff's affidavit and his deposition testimony establish a prima facie showing of his entitlement to judgment as a matter of law on the issue of defendant's liability, since these proofs "establish that the sole proximate cause of the subject accident was the defendant['s] violation of Vehicle and Traffic Law § 1141 in making a left turn when it was not reasonably safe to do so, directly into the path of [plaintiff's] oncoming [vehicle] which was lawfully present in the intersection" (see *Ducie v Ippolito*, 95 AD3d 1067, 1067 [2d Dept 2012]). The hearsay statement by defendant driver, as reported in the certified police report, is admissible as a party admission and an admission against interest (see *Yassin v Blackman*, __ AD3d __, 2020 NY Slip Op 05090 [2d Dept 2020]), and it, too, supports plaintiff's prima facie showing of defendant's negligence (see *Abramov v Miral Corp.*, 24 AD3d 397 [2d Dept 2005]; *Guevara v Zaharakis*, 303 AD2d

555, 556 [2d Dept 2003]). Notably, the transcript of defendant's deposition fails to demonstrate negligence on the part of any other party, or an explanation establishing defendant's non-negligence. In the absence of opposition to this motion, the lack of any non-negligent explanation entitles plaintiff to the summary judgment he seeks.

While the absence of comparative negligence need not be pleaded and proved by the plaintiff, since it is only relevant to the mitigation of plaintiff's damages (*see Rodriguez v City of New York*, 31 NY3d 312, 321 [2018]), defendant has not submitted any evidence in support of the culpable conduct affirmative defense he pleaded, while plaintiff has established a prima facie showing of the absence of culpable conduct on his part. Similarly, plaintiff has presented evidence that he was wearing his seatbelt at the time of the accident, and nothing has been submitted to the contrary. Accordingly, in addition to granting summary judgment to plaintiff on the issue of defendant's liability, defendant's affirmative defenses of comparative negligence and failure to wear a seatbelt are dismissed.

Based upon the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment against defendants on the issue of liability pursuant to CPLR 3212 is granted and defendant's first and fourth affirmative defenses are dismissed, and it is further

ORDERED that the parties are directed to appear in the Settlement Conference Part of the Westchester Supreme Court, located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601, on a date of which they will be notified by that Part, to schedule a trial on the

issue of damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
October 8, 2020


HON. TERRY JANE RUDERMAN, J.S.C.