

Gonzalez v Seraphin

2020 NY Slip Op 35521(U)

April 28, 2020

Supreme Court, Bronx County

Docket Number: Index No. 23845/2019E

Judge: John R. Higgitt

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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: I.A.S. PART 14

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ROBERT GONZALEZ

Plaintiff,

DECISION AND ORDER

- against -

Index No. 23845/2019E

DEVANTE STEVEN SERAPHIN, GORDON A. LEWIS,
JR., DONALD H. JAMES and AMARACHI O.
ULUOCHA,

Defendants.
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John R. Higgitt, J.

Upon the November 4, 2019 notice of motion of defendants James and Uluocha (“the James defendants”) and the affirmation and exhibits submitted in support of thereof; defendant Lewis’ December 3, 2019 affirmation in opposition; plaintiff’s December 10, 2019 affirmation in opposition; the James defendants’ December 11, 2019 affirmation in reply to defendant Lewis’ opposition; the James defendants’ December 16, 2019 affirmation in reply to plaintiff’s opposition; defendant Seraphin’s January 31, 2020 affirmation in opposition; the James defendants’ February 6, 2020 affirmation in reply to defendant Seraphin’s opposition; and due deliberation; the James defendants’ motion for summary judgment dismissing the complaint as against them and all cross claim against them is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on October 14, 2018. The James defendants seek summary judgment dismissing the complaint as against them and all cross claim against them on the ground that they are not liable for the subject accident. In support of their motion, the James defendants submitted the pleadings, the police accident report, an MV-104 report prepared by defendant Uluocha, and defendant Uluocha’s affidavit.

Defendant Uluocha averred that he was traveling southbound in the left lane on the Cross Bronx Expressway in heavy traffic when defendant Seraphin's vehicle, which was in the middle lane, passed him and then struck defendant Lewis' vehicle. According to defendant Uluocha, defendant Seraphin's vehicle subsequently struck the front portion of the vehicle he was operating, which vehicle was owned by the James defendants. The James defendants' assert that they are not liable for the accident because defendant Uluocha was operating their vehicle within the lane when defendant Seraphin's vehicle collided with the front portion of the James defendants' vehicle.

The court notes that the police accident report and MV-104 report are hearsay. However, defendant Uluocha's affidavit was sufficient to satisfy the moving defendants' prima facie showing.

Notably, a party demonstrates entitlement to summary judgment by showing that another vehicle entered his or her lane of travel when it was not safe to do so (*see Sanchez v Oxcin*, 157 AD3d 561, 564 [1st Dept 2018]).

In opposition to the James defendants' prima facie showing of entitlement to judgment as a matter of law on the issue of their liability, the non-movant parties failed to raise a triable issue of fact.

The non-moving parties assert that there are questions of fact as to whether defendant Uluocha operated the James defendants' vehicle in a reasonably safe manner. However, defendant Uluocha was traveling straight in his lane of travel and, as the driver with the right of way, was entitled to anticipate that that others would obey the traffic laws (*see Sanchez, supra*).

The non-moving parties also assert that the motion should be denied as premature because depositions have not taken place. However, the mere hope that a party might be able to

uncover some evidence during the discovery process is insufficient to deny summary judgment (see *Avant v Cepin Livery Corp*, 74 AD3d 533 [1st Dept 2010]); *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Additionally, the James defendants' motion cannot be premature when the information as to why the accident occurred reasonably rests within the rear driver's own knowledge and could be asserted by his or her own sworn attestations (see *Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; see *Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). Notably, none of the non-moving parties provided an affidavit in connection with this motion, and no reason was given for their failure to do so.

Accordingly, it is

ORDERED, that the motion of the James defendants' motion is granted, and the complaint as against them and the cross claims against them is dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of the James defendants dismissing the complaint as against them and the cross claims against them.

This constitutes the decision and order of the court.

Dated: April 28, 2020



John R. Higgitt, J.S.C.