

Anagnostopoulos v Rosenman

2020 NY Slip Op 35539(U)

April 14, 2020

Supreme Court, Nassau County

Docket Number: Index No. 604163/2019

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack

Justice

_____ x

MICHAEL ANAGNOSTOPOULOS,

**TRIAL/IAS, PART 18
NASSAU COUNTY**

Index No.: 604163/2019

Motion Seq. No.: 002

Motion Submitted: 2/11/2020

Plaintiff(s),

-against-

HILLEL B. ROSENMAN,

Defendant(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X
- Reply Affirmation/Supporting Exhibits.....X

Plaintiff, Michael Anagnostopoulos (Anagnostopoulos), moves this court pursuant to CPLR §3212 for an order granting him summary judgment on liability and dismissing the First Affirmative Defense in Defendant’s answer. Defendant, Hillel B. Rosenman

(Rosenman) opposes the motion. Anagnostopoulos commenced this action by the service of a summons and complaint dated March 26, 2019. Issue was joined by the service of answer dated April 22, 2019.

According to the complaint and moving papers, on January 24, 2019, Anagnostopoulos was a seat-belted passenger in a car that was side-swiped by the vehicle driven by Rosenman. At the time of the accident, Anagnostopoulos claims that his vehicle was stopped. He now seeks summary judgment on liability and on dismissing the First Affirmative Defense which contains various allegations of Anagnostopoulos' own negligence.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a prima facie showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (see *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegard v. New York University Medical Center*, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden

shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see *Zuckerman v. City of New York*, 49 NY2d 5557 [1980], *supra*). The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v. J.C. Duggan, Inc.*, 180 AD2d 570 (1st Dept. 1992), and it should only be granted when there are no triable issues of fact (see also *Andre v. Pomeroy*, 35 N2d 361 [1974]).

Herein, in support of the motion, Anagnostopoulos submits his own affidavit and the police accident report. In his affidavit, Anagnostopoulos claims that Rosenman was driving his vehicle at a dangerous and excessive speed, and while trying to change lanes, collided with the Anagnostopoulos vehicle. The police accident report supports this version of events, though the officer who drafted the report does not indicate whether the facts as stated in the “Accident Description/Officer’s notes” section of the report are based upon his own observations or based upon what he was told. It does appear as if police officers were at the scene prior to the accident for unrelated reasons. As a result of the accident, Anagnostopoulos claims he was injured.

The court finds Anagnostopoulos has established a *prima facie* showing of entitlement to summary judgment as a matter of law. The burden shifts to Roseman to establish a material issue of fact requiring a trial of the action.

In opposition, Rosenman submits his own affidavit wherein he claims he was the one who was stopped, and it was the Anagnostopoulos vehicle that changed lanes into his vehicle. In reply, George Anagnostopoulos, Plaintiff's father and the driver of Plaintiff's vehicle, submits an affidavit contradicting Rosenman's version of events and supporting his son's description of how the accident happened. In further support, he submits photographs of the accident and the decision of the arbitrator who heard the property damage portion of this accident and found Rosenman 100% responsible for the accident.

The court notes that the photographs do seem to support Anagnostopoulos' version of events, and together with the arbitrator's findings are strong evidence that Rosenman was responsible for the accident. However, contrary to Anagnostopoulos' claim, Roseman's affidavit is not a bare denial of the allegations. He states specifically that he was the stopped vehicle and that the Anagnostopoulos vehicle swerved into his lane and hit his car. To ignore his affidavit and credit the statements of Anagnostopoulos and his father would be a credibility determination the court is not to make on a summary judgment motion. (*Schwartz v. Gold Coast Rest. Corp.*, 139 AD3d 696 [2d Dept 2016] citing *Ferrante v. American Lung Ass'n*, 90 NY2d 623 [1997]). Further, while the finding of the arbitrator is not binding on this court, the court notes that the arbitrator made no specific credibility determination.

The motion will be granted to the extent that Anagnostopoulos bears no liability in causing the accident. However, the issue of Rosenman’s liability must be submitted to the trier of fact. The First Affirmative Defense will be dismissed. It merely pleads conclusions of law with no factual support (Moran Enterprises, Inc. v. Hurst, 96 A.D.3d 914 [2nd Dept. 2012]). Further Anagnostopoulos has established he was not liable, and his affidavit states he was wearing his seatbelt. Rosenman offers no admissible evidence contradicting this proof.

Accordingly, it is hereby

ORDERED, that Anagnostopoulos’ motion is GRANTED in part and DENIED in part; and it is further

ORDERED, that it is GRANTED to the extent that Anagnostopoulos is found to not be liable in causing the accident, and to the extent that the First Affirmative Defense is dismissed; and it is further

ORDERED, that the motion is DENIED in all other respects.

This constitutes the Decision and Order of the Court.

Dated: April 14, 2020
Mineola, N.Y.

/S/

Hon. James P. McCormack, J. S. C.

ENTERED

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Apr 16 2020

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COUNTY CLERK'S OFFICE