

Rios v Abdelwahab
2022 NY Slip Op 32468(U)
January 28, 2022
Supreme Court, Queens County
Docket Number: Index No. 716891/2021
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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MARCO E. RIOS, Index No.: 716891/2021

Plaintiff, Motion Date: 1/27/22

- against - Motion No.: 24

MOHAMED K. ABDELWAHAB, LAWRENCE M. Motion Seq.: 1
BAROUS, and NANCY CASTADINI,

Defendants.

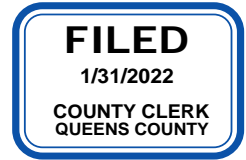
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The following electronically filed documents read on this motion by defendants LAWRENCE M. BAROUS and NANCY CASTADINI (collectively hereinafter defendants) for an Order pursuant to CPLR 3212, granting defendants summary judgment, dismissing the complaint and all cross-claims and counterclaims; and on this cross-motion by plaintiff for an Order pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability as against defendant MOHAMED K. ABDELWAHAB and finding that there is no comparative negligence on the part of plaintiff or defendants:

	Papers <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....EF	9 - 14
Notice of Cross-Motion-Affirmation-Exhibits.....EF	15 - 19
Affirmation in Further Support of Cross-Motion.....EF	22

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on August 22, 2018 on 21st Street at its intersection with 24th Avenue, in Queens County, New York.

This action was commenced by the filing of a summons and complaint on July 27, 2021. Defendants joined issue by service of an answer with cross-claims on August 19, 2021. Co-defendant Abdelwahab failed to submit an answer. Defendants and plaintiff now move for summary judgment.



In support of the motion, defendant Barous submits an affidavit, affirming that the accident occurred on 21st Street at its intersection with 24th Avenue. The subject intersection was governed by a three-phase traffic signal. Prior to the accident, he was traveling east on 21st Street. He had a solid green light in his favor at all times. As he approached the intersection, he gradually slowed his vehicle, since he intended to turn left through the intersection. He had his left-turn signal engaged. There was traffic approaching from the opposite direction on 21st Street, which prevented him from turning left. As a result, he was still on his side of the double-yellow line when the accident occurred. Co-defendant Abdelwahab's vehicle struck the bumper of his vehicle. As a result of the impact, his vehicle was pushed partially across the double-yellow line. The front-corner of his vehicle was then involved in a single impact with plaintiff's vehicle, which was traveling on the opposite direction on 21st Street westbound. He saw plaintiff's vehicle coming towards him just a split second before their vehicles came into contact. He did not have time to make any evasive maneuvers. There was nothing that he could have done to avoid this accident.

In support of the cross-motion, plaintiff submits an affidavit, affirming that he was involved in an accident at the intersection of 21st Street and 24th Avenue. Abdelwahab's vehicle struck the rear of defendants' vehicle. The collision between Abdelwahab's vehicle and defendants' vehicle forced defendants' vehicle to travel forward, to the left, and across the double-yellow line, subsequently colliding with his oncoming vehicle.

In the accident description portion of the certified copy of the Police Accident Report (MV-104AN), the responding officer notes:

VEHICLE 1 (co-defendant Abdelwahab) DID REAR END VEHICLE 2 (defendants) PUSHING VEHICLE 2 INTO VEHICLE 3 (plaintiff).

Based on the evidence submitted, defendants contend that as their vehicle was at a complete stop when struck in the rear, they are entitled to summary judgment because co-defendant Abdelwahab violated, inter alia, Vehicle and Traffic Law 1129 by failing to maintain a reasonably safe rate of speed and control over his vehicle, failing to exercise his duty to see what should be seen, and by failing to exercise his reasonable duty to avoid striking the vehicle ahead of him in the rear.

Plaintiff contends that he is also entitled to a determination that Abdelwahab was one-hundred percent liable for

the accident as a violation of the Vehicle and Traffic Law constitutes negligence per se.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form, eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Maccauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, it is undisputed that defendant Abdelwahab's vehicle rear ended defendants' stopped vehicle, pushing defendants' vehicle into plaintiff's vehicle.

Having made the requisite prima facie showing of entitlement to summary judgment as against defendant Abdelwahab, the burden then shifted to the non-moving party to raise a triable issue of fact (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

No opposition has been submitted.

Accordingly, and based on the above reasons, it is hereby,

ORDERED, that the motion is granted, the complaint and any and all cross-claims and counterclaims are hereby dismissed as against defendants LAWRENCE M. BAROUS and NANCY CASTADINI, only; and it is further

ORDERED, that the cross-motion by plaintiff is granted to the extent that plaintiff shall have partial summary judgment

against defendant MOHAMED K. ABDELWAHAB on the issue of liability; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages, only.

Dated: January 28, 2022
Long Island City, N.Y

Robert J. McDonald

ROBERT J. MCDONALD
J.S.C.

