

Dire v Mendez-Rodriguez

2022 NY Slip Op 35003(U)

December 22, 2022

Supreme Court, Kings County

Docket Number: Index No. 515116/2020

Judge: Carl J. Landicino

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

0

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of December, 2022.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X
CARMINE DIRE,

Index No.: 515116/2020

Plaintiff,

-against-

DECISION AND ORDER

JOSE LUIS MENDEZ-RODRIGUEZ and ALNE TRADE
MOTORS IMP. EXP LLC,

Motions Sequence #1

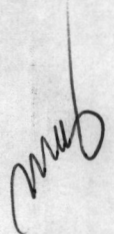
Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	12-16,
Opposing Affidavits (Affirmations).....	17,
Reply Affidavits (Affirmations)	18

2022 DEC 27 AM 10:21
KINGS COUNTY CLERK
FILED



After a review of the papers and oral argument, the Court finds as follows:

The instant action concerns a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on December 15, 2018. Plaintiff alleges that he was injured when the vehicle he was in was struck in the rear by a vehicle owned by Defendant Alne Trade Motors Imp. Exp LLC (“Defendant Alne”) and operated by Defendant Jose Luis Mendez-Rodriguez (“Defendant Jose”) (collectively the “Defendants”). The incident allegedly occurred on New Hampshire Avenue near the intersection of Swathmore Avenue in Ocean County, New Jersey.

The Plaintiff now moves (motion sequence #1) for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability and striking the first, third, fourth, fifth,

sixth, seventh, eighth, ninth, tenth and thirteenth affirmative defenses. The Plaintiff contends that summary judgment should be granted because the Defendant was negligent and the sole proximate cause of the collision. Specifically, the Plaintiff contends that summary judgment should be granted given that there is *prima facie* evidence that Plaintiff's vehicle was hit in the rear by the Defendants' vehicle. The Defendants partially oppose the motion to the extent that Plaintiff seeks to strike the Defendants' first, fifth, eighth, and thirteenth affirmative defenses.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341 [1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *Garnham & Han Real Estate Brokers v. Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept

1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 NY3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented by the Plaintiff to establish, *prima facie*, that the Defendants’ vehicle hit the Plaintiff’s vehicle in the rear. Specifically, Plaintiff states in his affidavit that “I came to a complete stop at a red light on New Hampshire Avenue Northbound at intersection Swathmore Avenue. While I was stopped at said red light, I was struck in the rear, by another vehicle that was operated by Defendant, JOSE LUIS MENDEZ-RODRIGUEZ, whose vehicle was immediately behind me in the same lane of travel”. (See Plaintiff’s Motion, NYSCEF Document 14, Paragraph 2).

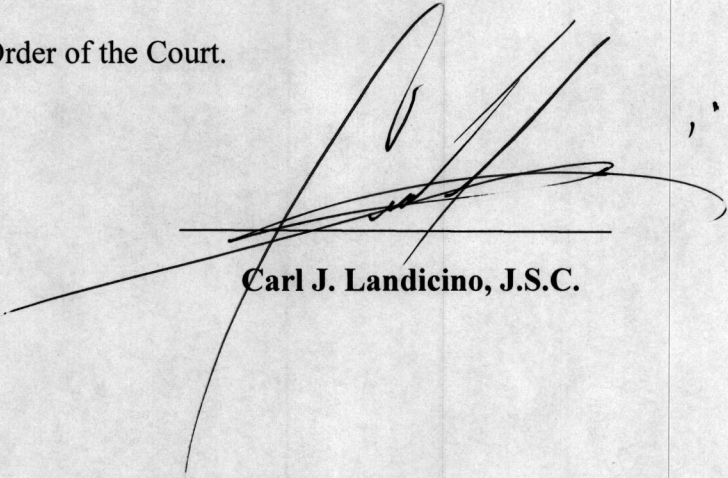
The Defendants have not raised an issue of fact as to Plaintiff’s comparative negligence and the Plaintiff has moved for the dismissal of certain Defendants’ affirmative defenses. The Defendants’ affirmative defenses (numbers 1, 3, 4, 5, 6, 7, 9, and 10) are dismissed. *See Sapienza v. Harrison*, 191 AD3d 1028, 142 N.Y.S.3d 584, 588 [2d Dept 2021]; *Kwok King Ng v. West*, 195 AD3d 1006, 146 N.Y.S.3d 811, 812 [2d Dept 2021]. Defendants’ eighth and thirteenth affirmative defenses remain as they relate to the issue of damages.

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #1) for summary judgment on the issue of liability is granted to the extent that the Defendant driver was negligent and the sole proximate cause of the accident, and the Defendants' affirmative defenses, numbers 1, 3, 4, 5, 6, 7, 9, and 10 are dismissed. The matter shall proceed on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
FILED
2022 DEC 27 AM 10:21