

Harrison v Espinal
2022 NY Slip Op 35155(U)
March 17, 2022
Supreme Court, Bronx County
Docket Number: Index No. 26320/2016E
Judge: Veronica G. Hummel
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 BRONX IAS PART 31

-----X
WILLIAM HARRISON and MILTON BASKERVILLE,

Plaintiffs

-against -
JUAN ESPINAL and BRYAN K. HALL,

Defendants.

Index No. 26320/2016E
DECISION/ORDER
Motion Seq. 3

-----X

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in regard to the motion of plaintiff WILLIAM HARRISON (Mot. Seq. 3) seeking an order, pursuant to CPLR 3212, granting plaintiff partial “summary judgment as to liability” against defendants JUAN ESPINAL and BRYAN K. HALL¹. By decision dated June 18, 2020, the court dismissed the complaint of plaintiff Milton Baskerville. [NYSCEF No. 78].

This is a personal-injury action arising out of a two-vehicle accident that occurred on March 28, 2016 on Jerome Avenue near the intersection of East Bedford Park Blvd, Bronx County (the “Accident”). At the time of the Accident, plaintiff was a passenger in the vehicle driven by defendant Espinal (“the Espinal Vehicle”). The vehicle driven by defendant Hall collided with the Espinal Vehicle. The Espinal Vehicle suffered damage to the right passenger side.

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case.” *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact.” *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep’t 2006). A plaintiff in a negligence action moving for summary

¹ Based on the Notice of Motion and papers submitted, plaintiff moves only for a determination of plaintiff’s liability as a passenger and does not move for summary judgment as to the respective negligence of the defendants. See generally *McGuire v McGuire*, 29 A.D.3d 963 (2d Dept 2006).

judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dep't 2020). A plaintiff is not required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

In support of the motion, plaintiff submits an attorney affirmation, copies of the pleadings, copies of the plaintiffs' deposition transcripts, a statement of material facts, and an uncertified copy of the police report.²

In the statement of material facts, plaintiff merely sets forth the date of the Accident, and the facts that the Accident involved the defendants' two cars and plaintiff was a passenger in the Espinal Vehicle. At deposition, plaintiff testified that he was a passenger in the Espinal Vehicle. The vehicle was traveling on Jerome Avenue, a two way street with two moving lanes and a parking lane in each direction. The Espinal Vehicle was struck in the right side and plaintiff did not see the other vehicle before impact.

Former plaintiff Baskerville³ testified that he was a passenger in the Espinal Vehicle. The Espinal Vehicle was in the right driving lane while driving at a rate of 20-25 miles per hour. Suddenly the Hall Vehicle struck the rear door on the right side of the Espinal Vehicle.

In opposition to the motion, defendants Espinal and Hall each submit an attorney affirmation and a statement of material facts. Neither defendant submits a personal affidavit or deposition testimony.

Plaintiff's motion seeking partial summary judgment against defendants based on his own lack of fault for the Accident is granted. Of note, there is a significant distinction between granting a plaintiff summary judgment on plaintiff's lack of culpable conduct on liability and granting a plaintiff summary judgment on defendants' negligence. *Oluwatayo v. Dulinayan*, 142 A.D.3d 113 (1st Dep't 2016). A grant of partial summary judgment against a defendant on liability in a

² As the police report is uncertified, the statements therein are not considered by the court. In any event, plaintiff sets forth a *prima facie* case based on the other submitted evidence. *Yassin v. Blackman*, 188 A.D.3d 62 (2d Dep't 2020); *Dong v. Cruz-Marte*, 189 A.D.3d 613 (1st Dep't 2020).

³ Defendant's argument that the sworn testimony of Baskerville is not competent evidence because the claims of Baskerville were dismissed is rejected as lacking any legal merit.

negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury. *Id.*; *Ortega .v Liberty Holdings, LLC*, 111 A.D.3d 904, 905-906 (2d Dep’t 2013). In contrast, a grant of partial summary judgment on the issue of the plaintiff’s lack of fault or culpability is a much narrower finding. Such a finding merely establishes as a matter of law that the plaintiff is free of any negligence, as would be the case of an innocent passenger. *Campbell v. Mincello*, 184 A.D.3d 412 (1st Dep’t 2020). The First Department pronouncement in *Garcia v Tri County Ambulette Serv., supra* (282 A.D.2d 206 (1st Dep’t 2001)) stands for the proposition that in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination that plaintiff had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver’s negligence. *Oluwatayo v Dulinayan, supra*.

Here, as it is undisputed that plaintiff was a passenger in the Espinal Vehicle and there is no claim that plaintiff contributed to causing the accident, the motion by plaintiff seeking partial summary judgment on liability is granted to the extent that plaintiff, as an innocent passenger, is found free from culpable conduct for the happening of the Accident, regardless of the issue of the defendants’ alleged individual negligence. *Campbell v. Mincello, supra*; *Oluwatayo v. Dulinayan, supra*. Likewise, any affirmative defenses based on culpable conduct and comparative negligence alleged against plaintiff are dismissed. *Oluwatayo v Dulinayan, supra*; *Prudente v. McBride*, 2020 WL 7091334 [Sup. Ct. New York County 2020]. “CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action” *Garcia v. Tri County Ambulette Serv., supra*.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of plaintiff WILLIAM HARRISON (Mot. Seq. 3) seeking an order, pursuant to CPLR 3212, granting plaintiff partial “summary judgment as to liability” against defendants JUAN ESPINAL and BRYAN K. HALL (Mot. Seq. 3) and finding plaintiff innocent of any negligence for the relevant accident as a passenger and dismissing any affirmative defense based on comparative negligence is granted; and it is further

ORDERED that on by decision dated June 18, 2020, the court dismissed the complaint of plaintiff Milton Baskerville. [NYSCEF No. 78] and as such the caption in the action shall henceforth read as:

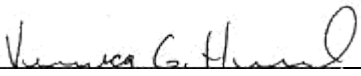
WILLIAM HARRISON,	
	Plaintiff,
-against-	
JUAN ESPINAL and BRYAN K. HALL,	
	Defendants.

and it is further

ORDERED that the Clerk shall mark the motion [Mot. Seq. 3] disposed in all Court records.

This constitutes the decision and order of the Court.

Dated: March 17 2022

Hon. 
VERONICA G. HUMMEL, A.J.S.C.

- | | | |
|------------------------------|---|---|
| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED | ☐ DENIED GRANTED IN PART ☐ OTHER |
| 3. CROSS-MOTION IS..... | GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER | |
| | AMEND CAPTION | |
| 4. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |
| | ☐ CONVERT TO ELECTRONIC FILING | ☒ EDIT CAPTION |