

Borisov v Zarovsky

2023 NY Slip Op 32655(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 515964/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of July 2023

HONORABLE FRANCOIS A. RIVERA

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FAINA BORISOV,

Plaintiff,

- against -

MIKHAIL ZAROVSKY, HARINDER SINGH,
ABBY L. PITTENGER, UNON LEASING TRUST
and APTARGROUP, INC. ,

Defendants.

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by defendant Mikhail Zarovsky (hereinafter the movant) on July 22, 2022, under motion sequence number one for an order pursuant to CPLR 3212 granting summary judgment in the movant's favor on the issue of liability and dismissing the complaint of the plaintiff Faina Borisov (hereinafter the plaintiff) and all cross claims asserted against him. The motion is opposed by the plaintiff.

- Notice of Motion
- Affirmation in Support
- Statement of Material Facts
Exhibits C-F
- Affirmation in Opposition
- Affirmation in Reply

BACKGROUND

On August 27, 2020, the plaintiff commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office. On October 26, 2020, defendant Harinder Singh interposed and filed a verified answer with the Kings County Clerk's office. Abby L. Pittenger and Union Leasing Trust and Aptargroup, Inc. interposed and filed a joint answer to the verified complaint.

DECISION & ORDER

Index No.: 515964/2020

Oral Argument: 6/8/2023

Cal. No.: 26, Ms. No.: 1

The complaint alleges the following salient facts. On March 12, 2020, plaintiff, was a passenger in a motor vehicle owned and operated by defendant Zarovsky which was traveling on the Verrazano Bridge Upper-Brooklyn Side in the County of Kings, State of New York. On the same date, time, and location defendant Harinder Singh, was operating his motor vehicle and defendant Abby L. Pittenger was operating a vehicle owned by defendant Union Leasing Trust. The three vehicles collided with each other (hereinafter the subject accident). As a result of the subject accident the plaintiff sustained serious physical injury. The subject accident was caused wholly and solely by reason of the negligence of the defendants in the operation of their respective vehicles without any fault or negligence on the part of the plaintiff.

LAW AND APPLICATION

A defendant moving for summary judgment in a personal injury action must demonstrate, prima facie, that he or she did not proximately cause the plaintiff's injuries (*Valdez v MTA Bus Co.*, 210 AD3d 821, 821 [2d Dept 2022], citing *Fargione v Chance*, 154 AD3d 713, 714 [2d Dept 2017]). Since there can be more than one proximate cause of an accident, a defendant seeking summary judgment must establish freedom from comparative fault as a matter of law (*Valdez v MTA Bus Co.*, 210 AD3d 821, 821 [2d Dept 2022], citing *Wilson v Mazewski*, 175 AD3d 1352, 1353 [2nd Dept 2019]).

An accident can have more than one proximate cause, and although it is generally for the trier of fact to determine the issue of proximate cause, it may be decided as a matter of law where only one conclusion may be drawn from the established facts (*Elusma v Jackson*, 186 AD3d 1326, 1328 [2nd Dept 2020]).

In support of the motion the movant submitted, among other things, the pleadings, a certified police report and his own affidavit. The movant's affidavit averred the following facts.

On March 12, 2020, the movant was operating his 2011 Toyota bearing New York State Registration Number GHK7427 on the East bound Verrazano Bridge upper level, in the third of four lanes of travel, in heavy, stop and go traffic. While his vehicle was at a complete stop for about two or three seconds, he was struck in the rear by Toyota sedan bearing New York State Registration Number T739607C and operated by co-defendant Harinder Singh.

There were three vehicles involved in this accident. The movant was the first vehicle, behind the movant was the operated by Singh, and behind Singh was vehicle operated by Abby L. Pittenger. The certified police report contained the statement of the movant's co-defendants and corroborated the movant's explanation of how the subject accident occurred. Uncertified police reports are inadmissible, even those which contain admissions against interest by a party (see CPLR 4518[a]; *Yassin v Blackman*, 188 AD3d 62 [2d Dept 2020]). Conversely, a certified police report is admissible, and to the extent it contains admissions against interest by parties, which constitute an exception to the hearsay rule, those statements are admissible (*Grimes v. Latimer*, 75 Misc. 3d 1227(A), 171 N.Y.S.3d 355 (N.Y. Sup. Ct. 2022)). Abby L. Pittenger stated that she saw the Singh vehicle stopped in front of her but could not bring her vehicle to a stop in time and struck the vehicle driven by Singh in the rear. Singh stated that he was behind the movant's stopped vehicle and was struck in the rear by the Pittenger vehicle which propelled him into the rear of the movant's vehicle.

The movant's evidentiary submission established that he was not negligent and did not cause the subject accident.

The movant demonstrated prima facie showing of entitlement to judgment as a matter of law dismissing the complaint and all cross claims asserted against him. None of the

codefendant's opposed the movant's motion. ³ of ⁴ Therefore any cross claims that they asserted

against the movant are dismissed as abandoned by their failure to oppose the motion to dismiss them (*See Elam v Ryder Sys., Inc.*, 176 AD3d 675, 676 [2nd Dept 2019], *citing Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2nd Dept 2017]; *see also Kronick v L.P. Thebault Co.*, 70 AD3d 648, 649 [2nd Dept 2010], *citing Genovese v Gambino*, 309 AD2d 832, 833 [2nd Dept 2003]).

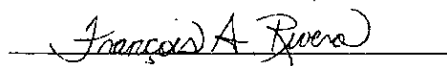
Plaintiff's opposition papers did not include an affidavit or any sworn testimony contradicting the movant's version of the events. Plaintiff's opposition papers failed to raise a triable issue of fact.

CONCLUSION

The motion by defendant Mikhail Zarovsky for an order pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability and dismissing the complaint and all cross claim asserted against him is granted.

The foregoing constitutes the decision and order in this case.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.