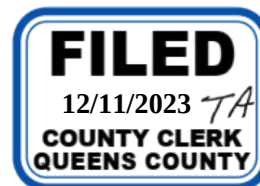


Castillo v James
2023 NY Slip Op 35116(U)
December 7, 2023
Supreme Court, Queens County
Docket Number: Index No. 710649/2023
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

IAS Part 20

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JONATHAN CASTILLO,

Index No.: 710649/2023

Plaintiff,

Motion Seq. No.: 1

-against-

Motion Date: 8.9.2023

KENDALL JAMES,

Defendant.

Motion Cal. No.: 4

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The e-filed papers bearing NYSCEF Doc. Nos. 8-21 were read on the motion made by the plaintiff, Jonathan Castillo (the "Plaintiff"), for, *inter alia*, summary judgment on the issue of liability.

The Plaintiff commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the "Accident"). Presently before the Court is the Plaintiff's motion for an Order: (1) granting summary judgment in his favor on the issue of liability against the defendant, Kendall James (the "Defendant"); (2) granting summary judgment on the issue of his lack of liability; and (3) dismissing the Defendant's affirmative defenses of comparative negligence, contributory negligence and culpable conduct. For the following reasons, the motion is granted.

I. Factual Background

The Accident occurred on May 11, 2023 in Queens, New York. Two vehicles were involved in the Accident. The Plaintiff was the operator of one vehicle, a New York City Police Department patrol car. The other vehicle, a 2019 Honda, was owned and operated by the Defendant.

The Plaintiff's affidavit in support avers that the vehicle he was operating had been stopped for a red traffic light at the intersection of Atlantic Avenue and Woodhaven Boulevard in Queens for "several seconds" when it was rear-ended by the Defendant's vehicle.

The Defendant does not submit an affidavit in opposition. Instead, an affirmation from their counsel is filed.

II. Discussion**A. Summary Judgment on the Issue of Liability**

The familiar principles applicable to summary judgment motions are set forth below.

“Summary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law” (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

The “function of summary judgment is issue finding, not issue determination” (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the “drastic” remedy of summary judgment, the movant “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 from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

Vehicle and Traffic Law §1129 [a] states that:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

“A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle. Thus, a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Quintanilla v Mark*, 210 AD3d 713-714 [2d Dept 2022] [internal quotation marks, brackets and citations omitted]).

The Plaintiff establishes *prima facie* entitlement to summary disposition because his affidavit demonstrates that the Defendant’s vehicle rear-ended his vehicle, which was stopped (*see id.*, *Modena v M & S Mechanical Services, Inc.*, 181 AD3d 802 [2d Dept 2020]). There are no triable issues of fact because the Defendant fails to submit an affidavit in opposition. The attorney affirmation submitted in opposition does not raise any triable issues of fact because it has “no

probative value in opposition to a summary judgment motion” (*Commissioners of the State Ins. Fund v Sanitation Salvage Corp.*, 187 AD3d 537, 537 [1st Dept 2020]).

The Defendant’s legal argument that the motion should be denied as premature because of outstanding discovery is without merit. In *Quintanilla v Mark*, 210 AD3d 714-715, the Second Department held as follows with respect to the interplay between a summary judgment motion and open discovery:

While a party is entitled to a reasonable opportunity to conduct discovery in advance of a summary judgment determination, a party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion. Here, the defendant's proffered need to conduct depositions did not warrant denial of the motion, since the defendant already had personal knowledge of the relevant facts, and his mere hope or speculation that evidence might be uncovered was insufficient to deny the motion [internal quotation marks, brackets and citations omitted]).

Here, the Defendant has personal knowledge of the relevant facts because he was the owner and operator of one of the vehicles involved in the Accident. Thus, the argument that outstanding discovery warrants denial of this motion is baseless (*see id.*; *Elfe v Roman*, 219 AD3d 1304 [2d Dept 2023]). The Defendant’s remaining opposition arguments with respect to liability are also baseless. The Plaintiff is therefore granted summary judgment on the issue of liability against the Defendant.

B. Culpable Conduct

The next issues presented for consideration are whether the Plaintiff is entitled to a determination that he bears no legal responsibility for the happening of the Accident and whether the Defendant’s affirmative defenses of comparative negligence, contributory negligence and culpable conduct should be dismissed. These issues are properly before the Court because: “[e]ven though a plaintiff is no longer required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff’s comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant’s affirmative defense of comparative negligence” (*Hai Ying Xiao v Martinez*, 185 AD3d 1014, 1014 [2d Dept 2020]; *see also Ng v West*, 195 AD3d 1006 [2d Dept 2021]) [citations omitted]).

Furthermore, CPLR § 3212 [g] “... permits a motion 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. The provision recognizes that, notwithstanding the denial

or partial grant, one of several facts may nonetheless appear to be conceded or otherwise definitively resolved by the moving and opposing papers” (*see Oluwatayo v Dulinayan*, 142 AD3d 113, 118 [1st Dept 2016])

The record demonstrates that the Plaintiff is an innocent driver (*see id.*). The evidence in admissible form, his affidavit, reveals that the vehicle he was operating was stopped when it was rear-ended by the Defendant’s vehicle. There is no evidence that the Plaintiff contributed in any manner to the Accident. Consequently, the “Plaintiff has established his lack of culpable conduct as an undisputed innocent driver, which entitles him to summary judgment on lack of fault pursuant to CPLR 3212 [g]” (*Oluwatayo v Dulinayan*, 142 AD3d 113, 120; *see Ramirez v Elias-Tejada*, 168 AD3d 401 [1st Dept 2019]). In light of said determination, the Defendant’s affirmative defenses of comparative negligence, contributory negligence and culpable conduct on the Plaintiff’s part are dismissed (*see Oluwatayo v Dulinayan*, 142 AD3d 113).

Lastly, the Court notes that although the Plaintiff is granted summary judgment on the issue of liability, the Defendant is entitled to discovery on the issue of damages (*see Barr v Raffae*, 96 AD2d 800 [1st Dept 1983]), and that the Plaintiff is not relieved of the burden of establishing that he suffered a serious injury within the meaning of Insurance Law § 5102 [d] (*see Zecca v Riccardelli*, 293 AD2d 31 [2d Dept 2002]).

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Plaintiff’s motion is granted; and it is further,

ORDERED, that the Plaintiff is granted partial summary judgment against the Defendant on the issue of liability; and it is further,

ORDERED, that it is determined that the Plaintiff bears no legal liability for the happening of the Accident; and it is further,

ORDERED, that the Defendant’s affirmative defenses of comparative negligence, contributory negligence and culpable conduct on the Plaintiff’s part are dismissed; and it is further,

ORDERED, that the Plaintiff shall serve a copy of this Order with Notice of Entry upon the Defendant via NYSCEF by February 7, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
December 7, 2023



MOJGAN C. LANCMAN, J.S.C.

