

Valenzuela v Pierre
2023 NY Slip Op 35133(U)
January 24, 2023
Supreme Court, Kings County
Docket Number: Index No. 520272/2020
Judge: Carl J. Landicino
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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 24th day of January 2023

PRESENT:

HON. CARL J. LANDICINO,
Justice.

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ANNABELLE VALENZUELA AND MARIBEL SOTO,

Index No.: 520272/2020

Plaintiffs,

DECISION AND ORDER

-against-

ALEXANDER GONZALO PIERRE, GABRIELLA ELERRE, Motions Sequence #1
JEAN R. PIERRE AND SEGUNDO ORTIZ TACURI,

Defendants.

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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	20-29,
Opposing Affidavits (Affirmations).....	35, 36, 41, 42,
Reply Affidavits (Affirmations)	37, 44-49, 83

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

The instant action relates to a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on June 24, 2020. Plaintiffs Annabelle Valenzuela and Maribel Soto (hereinafter the "Plaintiffs") allege that they were injured, as passengers, when their vehicle, operated by Defendant Jean R. Pierre (hereinafter "Defendant Pierre") was involved in a motor vehicle collision with a vehicle operated by Defendant Segundo Ortiz Tacuri (hereinafter "Defendant Tacuri"). The incident allegedly occurred at the intersection of 65th Place and Queens Boulevard in Queens, New York.

Defendants Alexander Gonzalo Pierre, Gabriella Pierre, and Jean R. Pierre (the “Pierre Defendants”) now move (motions sequence #1) for an order pursuant to CPLR 3212 granting them summary judgment and dismissal of the complaint and any cross-claims against them. The Pierre Defendants argue that summary judgment should be granted in their favor as they are free from negligence. The Pierre Defendants provide the affidavit of Defendant Jean Pierre in support of the motion.

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, 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, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning the merits of the motion by the Pierre Defendants, the Pierre Defendants rely on the affidavit of Defendant Jean Pierre. Defendant Jean Pierre states that the Plaintiffs were passengers in the vehicle on the date of the accident. He states that “[w]hen I reached the intersection of 65th Place and Queens Boulevard, I came to a complete stop at a red light.” “The vehicle had been stopped for about 5 seconds when it was struck in the rear by a Honda Pilot bearing license plate JCC8645.” He also states that the impact pushed his vehicle forward and the impact was without warning. Defendant Jean Pierre further stated that although the driver of the rear vehicle left the scene, he has “since come to learn that the driver of the vehicle that struck my vehicle is the co-defendant Segundo Ortiz Tacuri.” (See Pierre Defendants’ Motion, Exhibit “F”). Defendant Pierre’s statements are sufficient for the Pierre Defendants to establish a *prima facie* showing. *See Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. This is because “[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision.” *Tumminello v. City of New York*, 148 AD3d 1084, 49 N.Y.S.3d 739 [2d Dept 2017]; *Klopchin v. Masri*, 45 AD3d 737, 846 N.Y.S.2d 311 [2d Dept 2007].

In opposition to the motion, Defendant Tacuri fails to raise a material issue of fact that would prevent this Court from granting the motion made by the Pierre Defendants. As to Defendant Tacuri’s position that the motion is premature, it should be noted that the “motion was not

premature since these defendant[s] failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff.” *Turner v. Butler*, 139 AD3d 715, 716, 32 N.Y.S.3d 174, 175 [2d Dept 2016]. Moreover, “[i]n opposition, the defendant, who did not submit his own affidavit or an affidavit from a person with personal knowledge of the facts, failed to raise a triable issue of fact.” *Maliakel v. Morio*, 185 AD3d 1018, 1019, 129 N.Y.S.3d 99, 101 [2d Dept 2020]. There was no affidavit proffered by Defendant Tacuri. As such, Defendant Tacuri has failed to raise a material issue of fact.

Plaintiff Soto opposes the motion on the basis that the Pierre affidavit is not admissible in that it failed to comply with CPLR 2309(c). A certificate of conformity was not annexed thereto. However, that failure is not fatal to the application, and the Pierre Defendants have since cured the non-compliance by providing another affidavit notarized by a New York notary. The affidavit is not materially different from the initial one and does not serve to prejudice the remaining parties. See *U.S. Bank Nat. Ass'n v. Dellarmo*, 94 AD3d 746, 942 N.Y.S.2d 122 [2d Dept 2012]; *Am. Express Nat'l Bank v. Hoffman*, 210 AD3d 1039, 1040, 178 N.Y.S.3d 776, 777 [2d Dept 2022]. Accordingly, the Pierre Defendant's motion is granted, and the complaint and all cross-claims as against the Pierre Defendants are dismissed.

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

The Pierre Defendants' motion (motion sequence #1) is granted. The Plaintiff's complaint and any cross-claims as against the Pierre Defendants are dismissed.

This constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.

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KINGS COUNTY CLERK
FILED