

Henig v Baranovich

2024 NY Slip Op 34853(U)

September 19, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 604058/2020

Judge: Maureen T. Liccione

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Short Form Order

Index No. 604058/2020

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione

Justice Supreme Court

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GREGORY I. HENIG,

Plaintiff,

-against-

JENNIFER BARANOVICH, ROBERT M. SCOTT,
as Administrator of the Estate of STEVEN R.
BARANOVICH, FRANCISCO J. DILONE and
BRIAN JAVIER DILONE,

Defendants.

-----x

Mot. Seq. No. 002– MG
Orig. Return Date: 06/26/2024
Mot. Submit Date: 06/26/2024

PLAINTIFF’S ATTORNEY

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LAW OFFICES OF JOHN TROP
Attorneys for Francisco J. Dilone
and Brian Javier Dilone
1055 Franklin Avenue, Suite 204
Garden City, NY 10530

Upon the e-filed documents numbered 42 to 52, and 55 to 56 and upon due deliberation, it is determined as follows:

ORDERED that defendants’ Brain Javier Dilone and Francisco J. Dilone motion for summary judgment (motion sequence no. 002) in their favor and for dismissal of any cross-claims against them is granted.

Plaintiff commenced this action on March 3, 2020 to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle collision that occurred on March 5, 2019, on the Southern State Parkway in the Town of Hempstead, New York. The accident allegedly

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occurred when a vehicle operated by defendant Steven R. Baranovich and owned by defendant Jennifer Baranovich struck the rear of the vehicle operated by defendant Brain Javier Dilone and owned by defendant Francisco J. Dilone, which in turn struck the rear of the vehicle operated by plaintiff which was stopped in traffic. Defendants Jennifer Baranovich, Brain Javier Dilone, and Francisco J. Dilone filed answers with cross-claims. Defendant Steven R. Baranovich passed away on February 15, 2020 and a Stipulation to substitute Steven R. Baranovich for Robert M. Scott, Administrator for the Estate of Steven R. Baranovich, was so-ordered (St. George, A.J.S.C.) on July 12, 2023. No answer to the complaint was filed by the Robert M. Scott, Administrator for the Estate of Steven R. Baranovich.

Defendants Brain Javier Dilone and Francisco J. Dilone (Dilone defendants) now move for an order granting summary judgment in their favor and dismissing the cross claims against them. They argue that the evidence demonstrates that Dilone defendants' vehicle was stopped behind plaintiff's vehicle when it was struck in the rear by co-defendants' vehicle. In support of their motion, the Dilone defendants submit the pleadings, including their unverified answer, the unsigned deposition transcript of defendant Brian Javier Dilone, and a certified copy of the police accident report. Defendant Jennifer Baranovich opposes the summary judgment motion, arguing that Dilone defendants' papers contain inadmissible evidence. Defendant Jennifer Baranovich provided no affidavit in opposition to the motion, just an attorney affirmation. Plaintiff does not oppose the motion.

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). The failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). If such a showing is made, the burden shifts to the party opposing the motion for summary judgment who must proffer evidence in admissible form sufficient to establish the existence of any material issue of fact which requires a trial (*Alvarez*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

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 (*see Jimenez-Pantaleon v Aucancela*, 221 AD3d 676 [2d Dept 2023]; *Lopez v*

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Dobbins, 164 AD3d 776 [2d Dept 2018]; *Russell v J.L. Femia Landscape Servs., Inc.*, 161 AD3d 1119 [2d Dept 2018]). “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” (*Yawagyentsang v Safeway Construction Enterprises, LLC, et al.*, 225 AD3d 827 [2d Dept 2024]; *Bruce v Takahata*, 219 AD3d 448 [2d Dept 2023]; *Ordonez v Lee*, 177 AD3d 756 [2d Dept 2019]). Stops which are foreseeable under prevailing traffic conditions, even if sudden and frequent, must be anticipated by the following driver, who has a duty to maintain a safe distance between his or her vehicle and the preceding vehicle (*Quintanilla v Mark*, 210 AD3d 713 [2d Dept 2022]; *Mahmud v Ouyang*, 208 AD3d 861 [2d Dept 2022]; *Cantanzaro v Edery*, 172 AD3d 995 [2d Dept 2019]). If the driver of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the driver of the stopped or stopping vehicle is entitled to summary judgment on the issue of liability (*see Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2d Dept 2018]).

Here, Dilone defendants’ submissions establish a prima facie showing of entitlement to summary judgment on the issue of their liability (*see Jimenez-Pantaleon*, 221 AD3d 676; *Ordonez*, 177 AD3d 756; *Lopez*, 164 AD3d 776). Defendant Brian Javier Dilone testified at his deposition that while he was stopped in traffic, he was struck in the rear by the vehicle travelling behind him, which resulted in his vehicle being pushed forward into the rear of the vehicle stopped in front of him. The certified police report confirms the “chain” accident. The fact that Dilone defendants’ supporting proof was placed before this Court by way of an attorney’s affirmation annexing deposition testimony and other proof, rather than an affidavit of fact on personal knowledge, is not fatal to the motion (*Alvarez*, 68 NY2d at 325; *Flores v Harvest Moon Farm & Orchard*, 206 AD3d 623, 624 [2d Dept 2022]).

In opposition, defendant Jennifer Baranovich failed to raise a triable issue of fact (*see Kruter v United Parcel Serv. Gen. Servs. Co.*, 210 AD3d 671, 672 [2d Dept 2022]). Defendant Jennifer Baranovich’s opposition points to no evidence or facts as to whether there was a non-negligent explanation for the happening of the accident (*see Callahan v. Glennon*, 193 AD3d 1029, 1031 [2d Dept 2021]), but just contends that summary judgment should not be granted because of procedural defects with movant’s motion papers. Contrary to defendant Jennifer Baranovich’s argument, the unsigned deposition transcript of defendant Brian Javier Dilone is admissible

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evidence because it was submitted by defendant Brian Javier Dilone himself and was thus adopted as accurate (*see E.W. v City of New York*, 179 AD3d 747 [2d Dept 2020]).

The Court also finds unavailing defendant Jennifer Baranovich’s argument that the motion should be denied pursuant to CPLR 3212 (f) because Steven R. Baranovich is deceased and, as a consequence, any knowledge that he had is now unavailable to defendant Jennifer Baranovich. However, CPLR 3212 (f) permits a court to deny a motion for summary judgment only where it appears that the facts essential to oppose the motion “exist but cannot then be stated” (CPLR 3212 [f]; *Wesolowski v St. Francis Hosp.*, 108 AD3d 525, 526 [2d Dept 2013]; *Aurora Loan Services, LLC v. LaMattina & Assoc., Inc.*, 59 AD3d 578, 578 [2d Dept 2009]; *Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636, 637 [2d Dept 2006]). Here, defendant Jennifer Baranovich has not shown that further discovery will reveal facts supporting her opposition to the motion.

Accordingly, Dilone defendants’ motion is granted.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: September 19, 2024
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION