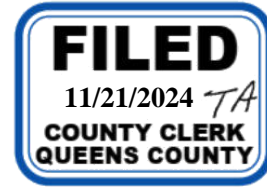


Roldan v City of New York
2024 NY Slip Op 35008(U)
November 20, 2024
Supreme Court, Queens County
Docket Number: Index No. 703425/2020
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY



Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

-----X
MANUEL ROLDAN,

Index No.:703425/2020

Motion Date: 9/23/2024

Plaintiff,

Motion Cal. No.: 39

-against-

Motion Sequence No.: 1

THE CITY OF NEW YORK, KEVIN M. MARTIN
AND JASMIN M. RIVERA,

Defendants.

-----X

The following efiled papers numbered 27-39, 41-46, 48 submitted and considered on this motion by Plaintiff Manuel Roldan (hereinafter Roldan) seeking an order pursuant to CPLR §3212 granting Roldan partial summary judgment on the issue of liability against the defendants the City of New York (hereinafter “City”), Police Officer Kevin M. Martin (hereinafter “Officer Martin”) and Jasmin M. Rivera (hereinafter “Rivera” or collectively as “Defendants”) herein; an Order bifurcating the trial of this matter; an order striking defendants affirmative defenses of culpable conduct and failure to wear a seatbelt.

<u>Motion Sequence 1</u>	<u>Papers Numbered</u>
Notice of Motion-Affirmation in Support-Affidavits-Exhibits.....	EF 38-55, 71
Affirmations in Opposition-Affidavits-Exhibits.....	EF 74-76
Affirmation in Reply-Affidavits-Exhibits.....	EF 77-78

Relevant Factual and Procedural Background

This action arises from a motor vehicle collision that occurred on August 25, 2019, at approximately 9:45 A.M. at the intersection of Northern Boulevard and Main Street in Queens, New York. Roldan, the passenger in a 2009 Toyota Corolla driven by Rivera, alleges he sustained injuries as a result of the accident. The vehicle operated by Rivera collided with a marked NYPD patrol car driven by defendant Officer Martin, who was acting in the course of his employment by the City at the time of the incident.

On the day of the accident, Roldan and Rivera were traveling eastbound on Northern Boulevard toward Roldan's place of work. Rivera, who owned and operated the vehicle, testified that she was driving in the leftmost lane at approximately 20 miles per hour and intended to continue straight through the intersection with a green traffic signal. Roldan testified that he was wearing his seatbelt at the time of the incident. Both Roldan and Rivera stated that their vehicle was struck on its right side by the police vehicle, which entered the intersection traveling northbound on Main Street against a red light.

Officer Martin, the driver of the police vehicle, was assigned to the 109th Precinct and operating a marked NYPD radio motor patrol vehicle. He and his passenger, Officer Steven Foley, were en route to the Jamaican Jerk Festival detail in the 113th Precinct. Both officers admitted during their depositions that they were running late for their assignment, which was not an emergency or priority call. Martin activated the vehicle's lights and sirens as it approached the intersection of Main Street and Northern Boulevard but testified that these were activated for less than one minute before the collision.

The collision occurred when the police vehicle entered the intersection against a red light and crossed multiple lanes of eastbound traffic on Northern Boulevard. The impact occurred in the fourth lane as the police vehicle struck the front passenger side of Rivera's car. Both vehicles sustained significant damage. Rivera's car was pushed onto the sidewalk, while the police vehicle rotated 90 degrees, coming to rest facing eastbound traffic on Northern Boulevard. Officer Foley, who was riding as a passenger in the police vehicle, testified that he did not observe Rivera's vehicle until just before the collision. He described the impact as heavy and confirmed that the lights and sirens on the police vehicle were activated before entering the intersection. The accident was documented in a police report, which noted that Roldan was an occupant in Rivera's vehicle and that Rivera had a green light at the time of the collision.

Roldan commenced this action on February 27, 2020, by filing a summons and verified complaint against the City, Officer Martin, and Rivera. The City filed its answer on August 6, 2020, asserting affirmative defenses, including culpable conduct and the failure to wear a seatbelt. Rivera filed her answer on October 28, 2020, and Officer Martin filed his answer on November 5, 2020. Depositions were conducted in 2022. Roldan appeared for deposition on September 13, followed by Officer Martin on September 27. Officer Foley testified on behalf of the City on September 20, and Rivera was deposed over two sessions on October 4 and October 11.

On September 8, 2024, Roldan filed a motion seeking partial summary judgment on the issue of liability, bifurcation of the trial, and the striking of defendants' affirmative defenses. He asserts that as an innocent, seat-belted passenger, he cannot be found liable for the accident. Defendants, in their opposition, takes no position as to any determination of liability, and primarily argues that issues of serious injury and causation remain unresolved. Defendants asserted that these issues should be preserved and only determined at the damages part of the trial. Roldan submitted a reply reiterating his arguments for partial summary judgment and rejecting defendants' assertions as immaterial to his motion on liability.

The case is currently in pretrial proceedings, and no note of issue has been filed. The motion for partial summary judgment remains pending.

Law and Application

CPLR §3212 provides:

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion...

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in

the action. The court may make any order as may aid in the disposition of the action....

On a summary judgment motion, “[t]he 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” (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “The proponent of a summary judgment motion 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 Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Rev 5, LLC v Congregation Beth Elohim*, 229 AD3d 820 [2d Dept 2024]). “The failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*see Id at 216 AD3d 134, 136 [2d Dept 2023]*; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Chuqui v Cong. Ahavas Tzookah V'Chesed, Inc.*, 226 AD3d 960, 962 [2d Dept 2024]; *Antonyuk v Brightwater Towers Condo Homeowners' Ass'n, Inc.*, 147 AD3d 711, 712 [2d Dept 2017]). “Once a prima facie showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action” (*see Id 310-316; Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; citing *Zuckerman v City of New York*, 49 NY2d at 562 [1980]; *see also Rev 5, LLC v Congregation Beth Elohim*, 229 AD3d 820, 822 [2d Dept 2024]).

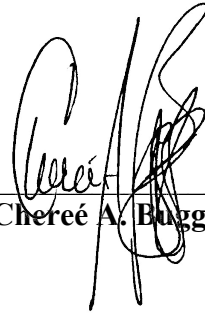
“The Supreme Court properly granted that branch of the plaintiff's motion which was, in effect, for summary judgment determining that she was not at fault in the happening of the accident. The plaintiff demonstrated, prima facie, that she did not engage in any culpable conduct that contributed to the happening of the accident” (*see Ochoa v Townsend*, 209 AD3d 867, 868 [2d Dept 2022]; citing *Morris v Dorota*, 187 AD3d 1174 [2d Dept 2020]; *Romain v City of New York*, 177 AD3d 590, 591 [2d Dept 2019]; *Medina v Rodriguez*, 92 AD3d 850, 851 [2d Dept 2012]). “The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers” (*see Id at 868; CPLR §3212[g]; Morris v Dorota*, 187 AD3d 1174 [2d Dept 2020]; *Romain v City of New York*, 177 AD3d 590, 591 [2d Dept 2019]; *Jung v Glover*, 169 AD3d 782, 783 [2d Dept 2019]; *Phillip v D & D Carting Co., Inc.*, 136 AD3d 18, 23 [2d Dept 2015]; *Medina v Rodriguez*, 92 AD3d 850, 851 [2d Dept 2012]). In the case at hand, Roldan demonstrated, prima facie, that he did not engage in any culpable conduct that contributed to the happening of the accident (*see Husbands v City of New York*, 230 AD3d 475, 476 [2d Dept 2024]). In opposition, the defendants also took no position as to the determination of liability.

Next, regarding Defendants serious injury and causation arguments, “serious injury threshold is decidedly an issue of damages, not liability” (*see Harrinarain v Sisters of St. Joseph*, 205 AD3d 893, 894 [2d Dept 2022]; citing *Van Nostrand v Froehlich*, 44 AD3d 54, 59 [2d Dept

2007]; *see also Priester v Phanor*, 228 AD3d 593, 594 [1st Dept 2024]). Since “the issue of serious injury was not germane to the issue of liability” (*see Priester v Phanor*, 228 AD3d 593, 594 [1st Dept 2024]), Defendants arguments regarding serious injury does not raise triable issues of facts on the issue of liability. Accordingly, it is hereby

ORDERED, that Plaintiff’s motion pursuant to CPLR 3212 is granted to the extent that it finds that Plaintiff was an innocent passenger seated in the front passenger seat of co-defendant Jasmin A. Rivera’s vehicle with his seat belt fastened when the accident occurred and, as such, is free from comparative fault in the occurrence of the accident.

Dated: November 20, 2024



Hon. Chereé A. Buggs, JSC

