

Maldonado v Pineda
2024 NY Slip Op 35253(U)
May 31, 2024
Supreme Court, Westchester County
Docket Number: Index No. 71811/2023
Judge: Joan B. Lefkowitz
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SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X
ERIC MALDONADO,

Plaintiff,

-against-

LESLY PINEDA,

Defendant.
-----X

DECISION & ORDER

Index No: 71811/2023

Motion Sequence No. 1

The following electronically filed papers (NYSCEF Doc Nos. 12-24) were read on the motion by the plaintiff for an order, pursuant to CPLR 3212, granting summary judgment on the issue of defendant's liability and dismissing the defendant's affirmative defense alleging culpable conduct.

Motion Sequence No. 1

Notice of Motion-Affirmation in Support-Affidavit in Support-Exhibits (A-E)

Affirmations in Opposition (2)

Reply Affirmation

Upon reading the foregoing papers, the motion is determined as follows:

Plaintiff sues to recover monetary damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on October 2, 2023, at approximately 1:02 p.m. on South Broadway near its intersection with Morris Street in the City of Yonkers, New York. The accident purportedly occurred when the motor vehicle operated by the defendant, which was traveling northbound on South Broadway and attempting a left-hand turn into a parking lot located on Morris Street, struck the motor vehicle operated by the plaintiff, which was traveling southbound on South Broadway. The collision allegedly caused the plaintiff to lose control of his vehicle and strike a third vehicle that was parked and unoccupied.

Prior to the completion of discovery, plaintiff moves for an order, pursuant to CPLR 3212, granting partial summary judgment in his favor on the issue of defendant's liability and for a further order, granting summary judgment dismissing the defendant's affirmative defense alleging culpable conduct on the part of plaintiff. Defendant opposes the motion.

In support of the motion, plaintiff tenders, among other things, the pleadings, an affidavit and an uncertified copy of the police accident report. Based thereon, plaintiff contends that the evidence unequivocally establishes that the sole proximate cause of the accident was defendant's violation of Vehicle and Traffic Law (VTL) § 1411, and that nothing plaintiff did, caused or contributed to the happening of the accident. Consequently, plaintiff submits that his motion should be granted in its entirety.

In opposition, defendant tenders her own affirmation in which she affirms that prior to the occurrence of the accident, she had been parked on the right-hand side of South Broadway facing northbound. Defendant affirms that it was her intention to pull out from the parking spot and continue driving northbound on South Broadway. To do this, defendant affirms that she activated her left turn signal, looked for vehicles to ensure a clear path and then, once traffic was clear, slowly began to pull out from the parking space at approximately 5 miles per hour. Defendant affirms that she never intended or attempted to make a left-hand turn. Once the front half of her vehicle had just begun entering the northbound travel lane, defendant affirms that plaintiff's vehicle, which was traveling in the southbound direction, suddenly came directly into the path of her vehicle, striking the front left driver's side. Defendant indicates that she had no time to react or avoid the collision.

On a motion for summary judgment the court's function is to determine whether triable issues of fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see* CPLR 3212 [b]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). In determining the motion, the court must view the evidence in a light most favorable to the nonmovant and is obliged to draw all reasonable inferences in the nonmovant's favor (*see Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]; *Stukas v Streiter*, 83 AD3d 18, 22 [2d Dept 2011]). Such a motion may be granted only if the movant tenders sufficient evidence in admissible form demonstrating, *prima facie*, the absence of triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make a *prima facie* showing requires denial of the motion regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the *prima facie* burden is met, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form establishing the existence of material issues of fact requiring a trial (*see Zuckerman*, 49 NY2d at 562). "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" (*Owens v City of New York*, 183 AD3d 903, 906 [2d Dept 2020] [internal quotation marks omitted]).

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. To be entitled to partial summary judgment a plaintiff does not bear the burden of establishing the absence of his or her own comparative fault" (*Sapienza v Harrison*, 191 AD3d 1028,

1029 [2d Dept 2021] [internal quotation marks, citations and ellipses omitted]; *see Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018]). However, “the issue of a plaintiff’s comparative negligence may be decided in the context of a summary judgment motion where[,] [as here][,] the plaintiff moves for summary judgment dismissing a defendant’s affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff” (*Sapienza*, 191 AD3d at 1029; *see Poon v Nisanov*, 162 AD3d 804, 808 [2d Dept 2018]).

Here, plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of defendant’s liability by submitting, inter alia, his affidavit which demonstrated that the defendant’s violation of VTL § 1141 was the sole proximate cause of the accident (*see Attl v Spetler*, 137 AD3d 1176, 1176-1177 [2d Dept 2016]). The evidence tendered was also sufficient to establish, prima facie, dismissal of defendant’s affirmative defense alleging culpable conduct (*see Poon*, 162 AD3d at 808). Accordingly, the burden of going forward shifted to the defendant to raise a triable issue of fact (*see Zuckerman*, 49 NY2d at 562).

In opposition, viewing the evidence in a light most favorable to the defendant, as the nonmovant on this motion, defendant raised a triable issue of fact (*see* CPLR 3212 [b]). The defendant’s affidavit contradicted the plaintiff’s version of the accident and thus raised a triable issue of fact as to how the accident occurred, whether the defendant was negligent at all in the happening of the accident and whether the plaintiff was negligent (*see Garutti v Kim Co Refrig. Corp.*, 222 AD3d 728, 729 [2d Dept 2023]; *Duvalsaint v Yupe-Garcia*, 169 AD3d 864, 865 [2d Dept 2019]). Contrary to the plaintiff’s contention, the police accident report is not certified and thus, the report and its contents constitute inadmissible hearsay (*see Laureano v EAN Holdings, LLC*, 225 AD3d 754, 756 [2d Dept 2024]; *Zeldin v Larose*, 223 AD3d 858, 859 [2d Dept 2024]; *Yassin v Blackman*, 188 AD3d 62, 66 [2d Dept 2020]). Based thereon, plaintiff’s motion is denied.

All other arguments raised on the motion and evidence submitted by the parties in connection therewith have been considered by the court, notwithstanding the specific absence of reference thereto. Based on the foregoing, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on July 2, 2024, at 9:30 a.m. via Microsoft Teams. Appearances are required unless the parties submit

a Preliminary Conference Stipulation by June 28, 2024, which is available at:
https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/12_6_PC.pdf.¹

ENTER,

Dated: White Plains, New York
May 31, 2024


HON. JOAN B. LEFKOWITZ, J.S.C.

To:

Counsel of record via NYSCEF

¹ If the parties would like an early settlement conference with the Court, they may request one by emailing CPT-ADRPartWestchester@nycourts.gov and completing the settlement conference form which is available at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/CPT_ADR_Form.pdf.