

Barzallo v Manganelli
2024 NY Slip Op 35461(U)
October 30, 2024
Supreme Court, Westchester County
Docket Number: Index No. 62345/2023
Judge: Janet C. Malone
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This opinion is uncorrected and not selected for official publication.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
EDGAR PROCEL BARZALLO,

Index No. 62345/2023

Plaintiff,

-against-

DECISION AND ORDER

Motion Sequence No. 1

JOSEPH MANGANELLI AND AGNES
MANGANELLI,

Defendants.

-----X
MALONE, J.

This personal injury action commenced on June 13, 2023, arises from a two-vehicle collision that occurred on September 2, 2021, at approximately 2:23pm, on East Main Street at or near its intersection with Locust Avenue, in the County of Westchester, State of New York, when the vehicle operated by Defendant Joseph Manganelli (“Manganelli”) and owned by Defendant Agnes Manganelli (collectively “Defendants”) rear-ended Plaintiff’s vehicle that had already come to a complete stop (Complaint, NYSCEF Doc. No. 1). Defendants appeared and answered on August 18, 2023, asserting general denials to Dickerson’s claims and alleging three affirmative defenses (Answer, NYSCEF Doc. No. 2).

Now before the Court is Plaintiff’s motion seeking an order granting summary judgment pursuant to CPLR R. 3212 on the issue of liability against Defendants, and dismissing Defendants’ contributory/comparative negligence affirmative defense (NYSCEF Doc. Nos. 4). In support, Plaintiff submits *inter alia* Affirmation of Eitan Magendzo, Esq. in Support, Affidavit of Edgar Procel Barzallo (“Barzallo”), a certified Police Accident Report and Affirmation of Jonathan Tamir, Esq. in Reply (NYSCEF Doc. Nos. 4-8, 13). Defendants oppose the motion with the Affirmation of John M. Gherlone, Esq. (NYSCEF Doc. No. 12).

A motion for summary judgment shall be granted in favor of the party that establishes upon evidentiary proof in an admissible form his entitlement to judgment as a matter of law and denied when such evidentiary proof in an admissible form is sufficient to require a trial to resolve material questions of fact. See, CPLR R 3212, *Zuckerman v. New York*, 49 NY2d 557, 562 (1980) and *Owens v. City of New York*, 183 AD3d 903, 906 (2d Dept 2020).

To establish a prima facie showing of entitlement to judgment as a matter of law, Barzallo must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 468 (2016). If Barzallo meets his burden, the burden shifts to the Defendants to establish, through admissible evidence, the existence of disputed issues of material fact for trial. CPLR R. 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560 (1980). The Defendants must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead, the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses exist warranting a trial. Summary judgment is a dramatic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact, but "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment." *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978).

Barzallo establishes prima facie entitlement to judgment as a matter of law on the issue of liability through his own affidavit and certified police report by demonstrating that Manganelli struck him from the rear while Barzallo was stopped at a red traffic light (Barzallo Affidavit, NYSCEF Doc. No. 8¹); *Yassin v. Blackman*, 188 AD3d 62, 68 (2d Dept. 2020) ("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"); see also VTL §1129(a).

Defendants fail to submit any evidence, or at a minimum, a sworn affidavit from Manganelli that a nonnegligent explanation for the collision exists. Instead, Defendants only provide the Court with an Affirmation in Opposition from Defendants' attorney, who has no personal knowledge of the facts. *Morissaint v. Raemar Corp.*, 271 A.D.2d 586, 587 (2d Dept. 2000); also see *Fergile v. Payne*, 202 A.D.3d 928, 931, (2d Dept. 2022). Since Defendants failed

¹ As the Barzallo Affidavit contains no paragraph numbers, the Court is unable to cite paragraph numbers.

to submit an affidavit from someone with personal knowledge pursuant to CPLR R. 3212(b), they have failed to raise an issue of triable fact as to Defendant's negligence.

Similarly, Defendants have failed to produce any evidence and, thus, failed to raise a triable issue of fact as to Barzallo's request to dismiss Defendants' second affirmative defense: comparative/contributory negligence.

Finally, Defendants' sole argument in opposition that Plaintiff's motion is premature since a preliminary conference has not been held, discovery has not been exchanged and depositions have not been conducted is unavailing. CPLR R. 3212(f) provides that "[s]hould it appear from **affidavits** submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other orders as may be just." (emphasis added).

Here, Defendants failed to submit an affidavit from Manganelli, someone with personal knowledge of the facts; thus, Defendants failed to show that the essential facts were within Plaintiff's exclusive knowledge or control, or that discovery might lead to relevant evidence. *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852 (2d Dept. 2013) ("A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or 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." *Id.*

Therefore, Plaintiff's motion is granted in its entirety.

To the extent relief requested has not been addressed, it is denied as moot in light of the foregoing.

Accordingly, it is hereby

ORDERED that Plaintiff Edgar Procel Barzallo's motion for summary judgment (Motion Seq. No. 1) on the issue of liability is granted, and it is further

ORDERED that Defendants' second affirmative defense of comparative negligence is dismissed, and it is further

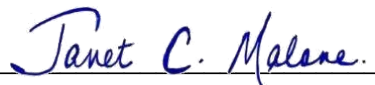
ORDERED, that the parties are hereby directed to submit a fully executed proposed preliminary conference stipulation which can be located at [west-general-civil-preliminary-](#)

[confstip-form.pdf \(nycourts.gov\)](#) no later than **December 2, 2024** or appear for a preliminary conference on **December 16, 2024 at 3:30pm** via Microsoft Teams – [Click here for the videoconference](#) .

This constitutes the Decision and Order of the Court.

Dated: October 30, 2024
White Plains, New York

ENTER:


HON. JANET C. MALONE, J.S.C.