

Valois v La Paz Lugo

2025 NY Slip Op 35073(U)

March 21, 2025

Supreme Court, Bronx County

Docket Number: Index No. 24293/2020E

Judge: Patsy Gouldborne

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 13



-----X

CLAUDIO M. PENA VALOIS,

Index No. 24293/2020E

Plaintiff(s),

-against-

Hon. PATSY GOULDBORNE

MIGUEL ANGEL LA PAZ LUGO and SUNCAR
CAR, INC.,

Justice Supreme Court

Defendant(s)

-----X

The following were read on this motion (Seq. 1) for SUMMARY JUDGMENT ON LIABILITY submitted on December 13, 2023.

Notice of Motion - Exhibits and Affidavits Annexed	NYSCEF No(s). 15-24
Opposition Affidavit and Exhibits	NYSCEF No(s). 29-31
Notice of Cross-Motion	NYSCEF No(s). 32-38
Opposition to Cross-motion	NYSCEF No(s). 43-52
Reply Affidavit	NYSCEF No(s). -----

Upon the foregoing papers, the Plaintiff Claudio M. Pena Valois moves, pursuant to CPLR 3212 for an order granting summary judgment on the issue of liability against the Defendants Miguel Angel La Paz Lugo [“Lugo”] and Suncar Car, Inc.; striking Defendants’ affirmative defenses of culpable conduct, comparative negligence, and failure to wear a seatbelt; and for such other relief as this Court deems just proper and equitable. Defendant opposes the instant motion and cross-moves for summary judgment and dismissing Plaintiff’s complaint on the grounds that Plaintiff has not sustained a “serious injury” pursuant to the provisions of Insurance Law §§ 5102(d) and 5104(a). After due deliberation, these motions for summary judgment are decided in accordance herewith.

This personal injury action arises from a motor vehicle accident between the Plaintiff and a vehicle owned by Suncar Car, Inc. and operated and Miguel Angel La Paz Lugo which occurred on October 6, 2019, in Bronx County New York.

A. Plaintiff’s Liability Motion

In support of this motion, Plaintiff submits, inter alia, the pleadings; an uncertified Police Accident Report¹; Plaintiff’s deposition transcript, Defendant Lugo’s transcript; and an attorney’s affirmation. Plaintiff testified that

¹ The Court cannot consider the police accident report as competent evidence in deciding this motion as it is uncertified. *Coleman v. Maclas*, 61 AD3d 569, (1st Dept. 2009).

at the time of the accident, he was wearing his seatbelt. [Pl EBT at 14-15]. Plaintiff testified the accident occurred while travelling over University Heights Bridge from Manhattan into the Bronx. [Tr at 16-17]. Plaintiff testified that he was stopped for approximately 5-10 seconds before his vehicle was struck in the rear. [Tr at 18-19].

Defendant Lugo testified to wet road conditions on the night of the accident. [Lugo EBT at 22-23]. Lugo testified the accident occurred at a red light. [Tr at 23]. Lugo testified that other vehicles were stopping ahead of him, and he gradually pressed his brakes, but the car slid on the wet pavement and tapped the vehicle ahead of him. [Tr at 24]. Lugo testified that he did not recall his approximate speed when applying his brakes. [Tr at 24]. Lugo testified that his car skidded before impact, and he tried to avoid Plaintiff's vehicle and hit a column. [Tr at 26].

Plaintiff's Counsel argues the parties' testimony establishes Plaintiff's entitlement to summary judgment on the issue liability. Counsel argues that Plaintiff is free of culpable conduct or comparative negligence.

In opposition, Defendants submit an attorney's affirmation. Defendants' Counsel argues that the instant motion should be denied as there is an issue of fact as to whether Plaintiff's vehicle was "stopped" or "stopping." Counsel argues that the credibility issues presented herein should be presented before a jury.

Discussion

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law. Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact. *Giuffrida v. Citibank Corp.*, 100 NY2d 72 [2003]; see also *Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]. 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 to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. (*Fernandez v Ortiz*, 183 AD3d 443 [1st Dept 2020]).

A rear-end collision with a *stopped or stopping* vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle and imposes a duty on the part of that driver to "come forward with an adequate nonnegligent explanation for the accident." *Bajrami v Twinkle Cab Corp.*, 147 AD3d 649 [1st Dept. 2017]. Moreover, it is well settled that "[w]hen approaching another vehicle from behind, drivers are required to maintain a reasonably safe rate of speed, maintain control over the vehicle, and use reasonable care to avoid a collision, by, among other things, including maintaining a safe distance" (*Passos v MTA Bus Co.*, 129 AD3d 481, 481, 13 NYS3d 4 [1st Dept 2015], citing Vehicle and Traffic Law § 1129 [a]).

It is well-settled that a driver is responsible for taking into account weather and road conditions and tailoring their actions accordingly to avoid accidents. See *Rodriguez v. City of New York*, 161 A.D.3d 575, 576 [1st Dept. 2018], citing *LaMasa v. Bachman*, 56 A.D.3d 340 [1st Dept. 2008]).

Here, Plaintiff's submissions establish a *prima facie* entitlement to summary judgment; as it is unrefuted that Defendant Lugo's vehicle struck the Plaintiff's vehicle in the rear as they were at the red light.

In opposition, the Defendants have not come forward with any non-negligent explanation for the accident as Lugo's testimony demonstrates that he struck the Plaintiff's vehicle in the rear; and his awareness of the road conditions at the time of the accident. The Defendants have failed to raise an issue of fact. Additionally, wet, slippery road conditions do not, alone, constitute an adequate non-negligent explanation, absent proof that the condition was unanticipated" *Stringari v. Peerless Importers, Inc.*, 304 AD2d 413 [1st Dept. 2003].

In light of the foregoing, Plaintiff's motion for summary judgment on the issue of liability against the Defendants Miguel Angel La Paz Lugo and Suncar Car, Inc is **GRANTED**. Defendants' affirmative defenses of culpable conduct, comparative negligence, and failure to wear a seatbelt are dismissed.

B. Defendant's Serious Injury Cross-Motion

Plaintiff alleges that as a result of the motor vehicle accident that occurred on October 9, 2019, he sustained serious injuries to his right knee, left wrist, and left elbow. Plaintiff alleges that he sustained a "serious injury" under the "permanent consequential limitation," "significant limitation," and/or "90/180-day" categories of the Insurance Law.

In support of the motion, Defendants submit, inter alia, the affirmed reports of Jessica F. Berkowitz; M.D. and Thomas P. Nipper, M.D.

In opposition, Plaintiff submits, inter alia, Plaintiff's affidavit; the affirmed narrative report of Thomas Scilaris, M.D.; the affirmed surgical report of Mark Kramer, M.D.; MRI reports; certified treatment records; and uncertified hospital records.

Plaintiff's Counsel argues that Defendants' cross-motion should be denied as untimely. Counsel states Defendants cross-moved on the issue of serious injury 69 days after the Note of Issue was filed and have failed to show good cause for the delay. Counsel states that the Case Scheduling Order directs summary judgment motions are to be made within 60 days of the filing the Note of Issue.

Discussion

Procedurally, CPLR §2214(b) directs that any notice of cross-motion shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time so demands. A cross-motion is merely a motion by any party against the party who made the original motion, made returnable at the same time

as the original motion. *Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]; see also *Brill v City of New York*, 2 NY3d 648 [2004].

Here, the Case Scheduling Order dated June 7, 2021, directs that “[s]ummary judgment motions shall be made no later than 60 days after the filing the Note of Issue.” Plaintiff filed the Note of Issue on January 18, 2023. The instant motion for summary judgment on the issue of liability, was filed on January 16, 2023, and Defendants filed opposition herein on February 15, 2023. Thereafter, the Defendants filed a “cross”-motion for summary judgment on the issue of serious injury on March 27, 2023. The Defendants’ cross-motion for serious injury does not meet the definition of a cross-motion as it is mislabeled. Moreover, the Defendants’ moving papers fail to acknowledge the cross-motion’s untimeliness; and fail to present good cause for their failure to move for summary judgment within the timeline set forth in the Case Scheduling Order and this Court’s part rules. *Doe v Madison Third Bldg. Cos., LLC*, 121 AD3d 631 [1st Dept 2014]. Allowing the Defendants the untimely cross-motion without good cause for the delay affords the Defendants an unfair and proper advantage. [*Kershaw*, 114 AD3d 75 at 88].

In light of the foregoing, the Defendant’s cross-motion for summary judgment on the issue of serious injury is untimely and is hereby **DENIED**.

Accordingly, it is hereby;

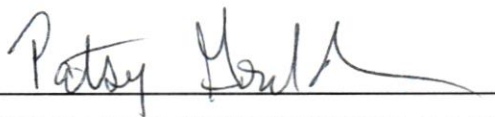
ORDERED, that Plaintiff’s motion for summary judgment on the issue of liability against the Defendants Miguel Angel La Paz Lugo and Suncar Car, Inc is **GRANTED**; and the Defendants’ affirmative defenses of culpable conduct, comparative negligence, and failure to wear a seatbelt are dismissed; and it is further

ORDERED, that Defendants’ cross-motion for summary judgment and dismissing Plaintiff’s complaint on the grounds that Plaintiff has not sustained a “serious injury” pursuant to the provisions of Insurance Law §§ 5102(d) and 5104(a) is **DENIED** as untimely; and it is further

ORDERED, that the Clerk shall mark the motion (*Seq.#1*) decided in all court records.

This constitutes the Order of the Court.

Dated: March 21, 2025


HON. PATSY GOULDBORNE, J.S.C.

-
- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT