

Gonzalez v Clark

2025 NY Slip Op 35280(U)

March 18, 2025

Supreme Court, Queens County

Docket Number: Index No: 719820/2020

Judge: Joseph J. Esposito

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Joseph J. Esposito PART 17
Justice

-----X
ALVIN GONZALEZ,

Plaintiff,

- against -

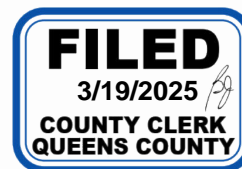
DONDRE CLARK, SHARON WILLIAMS,
SONIA CUNGU, LATOYA WILLIAMS, FRANK CARROLL,
THE JAMAICA HOSPITAL, CITY OF NEW YORK,
NEW YORK CITY FIRE DEPARTMENT,
and JOHN DOE, a driver not yet identified,

Defendants.
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Index No: 719820/2020

Motion Date: 11/06/2024

Motion Seq No. 4



The following numbered papers read on this motion by plaintiff, Alvin Gonzalez, for an Order (1) Granting plaintiff Alvin Gonzalez partial summary judgment on the issue of liability against defendants Dondre Clark, Sharon Williams, Sonia Cungu, Frank Carroll, and The Jamaica Hospital (“defendants”), (2) Striking so much of defendants’ affirmative defenses as sound in contributory negligence/comparative fault, assumption of risk, failure to mitigate or use a seatbelt, and lack of personal jurisdiction, and (3) For such further or other relief that this Court may deem just and proper..

	<u>Papers Numbered</u>
Notice of Motion – Affirmation –Exhibits.....	EF 139 - 160
Opposition Papers.....	EF 161, 179
Reply.....	EF 203

The following numbered papers read on this cross-motion by defendant, Sonia Cungu, for an Order (1) Granting the defendant, Sonia Cungu summary judgment on the issue of liability dismissing the complaint and all cross claims; and (2) Granting such other, further, and different relief as to this Court may seem just, proper, and equitable.

	<u>Papers Numbered</u>
Notice of Motion – Affirmation –Exhibits.....	EF 163 - 168
Opposition Papers.....	EF 169 – 170, 198,

Reply..... 204 - 205
EF 199

The following numbered papers read on this cross-motion by defendant, The Jamaica Hospital, for an Order (1) Granting the defendant, The Jamaica Hospital, summary judgment pursuant to CPLR § 3212, dismissing the Summons and Complaint and all cross-claims therein against the moving defendant, on the grounds that defendant bears no liability for the automobile accident at issue; (2) Granting defendant, The Jamaica Hospital, permission to serve the instant cross-motion briefly outside 120 days after service of the Note of Issue and; (3) For such other and further relief as this Court deems just, proper and equitable.

	<u>Papers Numbered</u>
Notice of Motion – Affirmation –Exhibits.....	EF 172 – 175
Opposition Papers.....	EF 179 – 192, 200
Reply Papers.....	EF 193, 201

This lawsuit arises from a multi-vehicle collision that occurred on December 18, 2019, on the westbound lanes of the Grand Central Parkway near 150th Street in Queens, New York. Plaintiff Alvin Gonzalez was a front-seat passenger in a vehicle owned by defendant Sharon Williams and operated by defendant Dondre Clark. As Clark attempted to change lanes, his vehicle collided with a vehicle leased and operated by defendant Sonia Cungu, which was traveling in the middle lane. Following this initial impact, Clark’s vehicle was pushed back toward the left lane, where it struck a minivan owned and operated by defendant Latoya Williams.

Shortly after the collisions, an ambulance operated by defendant The Jamaica Hospital ("Jamaica Hospital") arrived at the scene. The ambulance, driven by EMT Antoinette Burrows, parked partially in the right lane off to the side, ahead of the vehicles involved in the accident. Plaintiff was assisted out of Clark’s vehicle and into the ambulance’s rear compartment, where he was evaluated by EMT Burrows and EMT Jeffrey Levine. While plaintiff was still inside, the ambulance was rear-ended by a vehicle owned and operated by defendant Frank Carroll, allegedly causing further injuries to plaintiff. Both EMT Burrows and EMT Levine were also inside the ambulance at the time of impact, and they fell, appeared injured, and ceased treating plaintiff.

Plaintiff’s Motion for Summary Judgment

Plaintiff moves for partial summary judgment, asserting that, as a passenger, he was free from fault and seeks a determination of liability against the defendants. The Court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues" (*Lopez v Beltre*, 59 AD3d 683, 685 [2d Dept 2009]; *Santiago v Joyce*, 127 AD3d 954 [2d Dept 2015]). As summary judgment is to be considered the procedural equivalent of a trial, "it must clearly appear that no material and triable issue of fact is presented This drastic remedy should not be granted where there is any doubt as to the existence of such issues ... or where the issue is 'arguable' [citations omitted] (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *see also, Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]; *Andre v Pomeroy*, 35

NY2d 361 [1974]; *Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]; *Dykeman v Heht*, 52 AD3d 767 [2d Dept 2008]. Summary judgment "should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Collado v Jiacono*, 126 AD3d 927 [2d Dept 2014]), citing *Scott v Long Is. Power Auth.*, 294 AD2d 348, 348 [2d Dept 2002]; see *Charlery v Allied Transit Corp.*, 163 AD3 914 [2d Dept 2018]; *Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Bravo v Vargas*, 113 AD3d 579 [2d Dept 2014]). The burden is on the party moving for summary judgment to demonstrate the absence of a material issue of fact.

Applying the above well settled principles for summary judgment to this case, the Court finds that the plaintiff established his entitlement to judgment as a matter of law by submitting sufficient evidence in the form of depositions transcripts and discovery responses from various parties. Since the Court finds that the plaintiff sustained its initial burden of establishing a *prima facie* entitlement to summary judgment, the burden shifts to the non-movants to produce evidentiary proof in admissible form establishing the existence of a genuine issue of fact.

Defendants Clark and Williams oppose plaintiff's motion, conceding plaintiff's lack of fault but arguing that triable issues remain as to the apportionment of liability. Defendant Carroll also opposes, asserting that questions of fact exist regarding his negligence and whether the emergency doctrine applies.

In response, plaintiff argues that Clark, Williams, and Carroll each violated provisions of the Vehicle and Traffic Law, establishing their negligence as a matter of law. Plaintiff further asserts that Carroll had ample opportunity to avoid striking the ambulance but failed to take reasonable precautions.

It is undisputed that plaintiff was a passenger at the time of the accident. In an action arising out of a motor vehicle accident, "an innocent plaintiff is entitled to a determination that she had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver's negligence" *Oluwatayo v Dulinayan*, 142 A.D.3d 113, 119, 35 N.Y.S.3d 84 [1st Dept. 2016]. As an "innocent passenger", plaintiff is entitled to summary judgment finding that he does not bear any liability in causing the subject motor vehicle accident (see *Garcia v Tri County Ambulette Serv.*, 282 A.D.2d 206, 207, 723 N.Y.S.2d 163 [1st Dept 2001]; *Mata v Road Masters Leasing Corp.*, 128 A.D.3d 780, 781, 10 N.Y.S.3d 124 [2d Dept 2015], citing CPLR 1411). For similar reasons, the Court dismisses defendants' affirmative defenses alleging contributory negligence on the part of plaintiff (*Mora v Branker*, — A.D.3d —, 2024 NY Slip Op 00381 at *1 [1st Dept, January 30, 2024]). Furthermore, plaintiff testified at his deposition that he wore his seat belt when he sat in the vehicle (NYSCEF Doc. 150; Plaintiff Deposition Transcript, p. 25:18-20), and as such, defendants' affirmative defense of failure to wear a seatbelt is dismissed. Similarly, the Court dismisses the affirmative defenses of assumption of risk and lack of personal jurisdiction as none of the defendants proffer opposition against the relief sought. Accordingly, it is

ORDERED that plaintiff's motion for summary judgment, is granted only to the extent of finding that plaintiff was an "innocent passenger," and therefore, does not bear any liability; and it is further

ORDERED that plaintiff's motion to strike the affirmative defenses of contributory negligence/comparative fault, assumption of risk, failure to mitigate or use a seatbelt, and lack of personal jurisdiction is granted.

Defendant Sonia Cungu's and Jamaica Hospital's Motion for Summary Judgment

Defendant Sonia Cungu submits a cross-motion for summary judgment, seeking dismissal of all claims and cross-claims against her. Cungu contends that Clark's improper lane change was the sole proximate cause of the accident. Plaintiff opposes the motion, arguing that conflicting testimony exists regarding the speed of Cungu's vehicle and how the accident occurred. Clark testified that he observed Cungu's vehicle approaching at high speed in the moments before the impact, and his testimony conflicts with Cungu's regarding the position and movement of her vehicle immediately before the collision. Triable issues of fact therefore preclude summary judgment.

Jamaica Hospital, similarly, cross-moves for summary judgment, asserting it bears no liability because its ambulance was legally parked with emergency lights activated. It argues that Carroll's rear-end collision with the ambulance was the sole proximate cause of the impact. Plaintiff opposes, contending that the ambulance was parked partially in a right lane with no siren engaged. Clark and Williams also oppose Jamaica Hospital's motion, arguing that the ambulance's positioning contributed to the accident. Given these unresolved factual issues, Jamaica Hospital's motion for summary judgment is denied. Accordingly, it is

ORDERED that defendant Sonia Cungu's cross-motion for summary judgment is denied; and it is further

ORDERED that defendant Jamaica Hospital's cross-motion for summary judgment is denied.

The foregoing constitutes the decision and order of this Court.

Dated: March 18, 2025



JOSEPH J. ESPOSITO, J.S.C.

