

Castro v Blessinger
2025 NY Slip Op 35564(U)
January 13, 2025
Supreme Court, Nassau County
Docket Number: Index No. 617832/2023
Judge: Thomas Rademaker
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SUPREME COURT- STATE OF NEW YORK
COUNTY OF NASSAU: TRIAL/JAS PART12

PRESENT:

Hon. Thomas Rademaker, J.S.C.

_____x

DAVID A. CASTRO,

Plaintiff(s),

Index No: 617832/2023

Motion Seq. No.: 001

Motion Submitted: 11/19/2024

-against-

DECISION AND ORDER

**LAWRENCE W. BLESSINGER &
LAWRENCE BLESSINGER, JR.,**

Defendant(s).

_____x

The following papers read on this motion:

Notice of Motion/Supporting Exhibits. (mot seq 001)..... 1
Affirmations in Opposition.....2
Reply Affirmation3

The Plaintiff moves pursuant to CPLR §3212, for an Order which seeks, *inter alia*, summary judgment against Defendant with respect to the liability, along with the striking of all affirmative defenses and cross-claims as to comparative fault and contributory negligence. The Defendants oppose this motion.

The Plaintiff commenced this action through the filing and serving of a Summons and Complaint upon the Defendant, with said Summons and Complaint being filed with the Court on November 1, 2023. The Defendants filed their Answer with the Court on January 6, 2023. Note of

Issue was filed on October 15, 2021. Joinder of issue is complete and the parties have not filed a Note of Issue.

The accident at bar occurred on December 20, 2023, when the plaintiff, driving eastbound on Merillon Avenue, Garden City, New York was struck by the motor vehicle operated by Lawrence W. Blessinger, who was traveling Westbound on Merillon Avenue, and had been traveling on the wrong side of the median. The vehicles sustained a head on collision. The police report provides that the Defendant Driver admitted that he “accidentally went on the wrong side of the median box”

It is well settled that in a motion for summary judgment the moving party bears the burden of making a prima facie showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center*, 64 NY2d 851 [1985]). Once this 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 Zuckerman v. City of New York*, 49 NY2d 5557 [1980]). The primary purpose of a summary judgment motion is issue finding not issue determination (*Garcia v. J.C. Duggan, Inc.*, 180 AD2d 570 [1st Dept. 1992]), and it should only be granted when there are no triable issues of fact (*see also Andre v. Pomeroy*, 35 N2d 361 [1974]).

Facts stated in a police report that are hearsay are not admissible unless they constitute an exception to the hearsay rule. Pursuant to CPLR 4518(a), a police accident report is admissible as a business record so long as the report is made based upon the officer's personal observations and while carrying out police duties. Where information in a police accident report is not based on the personal observations of a police officer, "it may nevertheless be admissible as a business record if the person giving the police officer the information contained in the report was under a business duty to relate the facts to him [or her],"" or if the statement qualifies under another hearsay exception, such as an admission (id. at 1022, quoting *Stevens v Kirby*, 86 AD2d 391, 395, 450 N.Y.S.2d 607). "[E]ach participant in the chain producing the record, from the initial declarant to the final entrant, must be acting within the course of regular business conduct or the declaration must meet the test of some other hearsay exception. '" (*Country-Wide Ins. Co. v Lobello*, 186 AD3d 1213, 1215 [2d Dept 2020]). The Defendant's admission he had accidentally went on the wrong side of the media is an interest against interest, and accordingly is not considered to be hearsay. The Certified police report does qualify as an admissible business record, since the officer at the scene recorded the Plaintiff's statements.

In opposing a plaintiff's motion for summary judgment, the defendants have a duty to come forward with an adequate, non-negligent explanation for the accident.(See *Finney v. Morton*, 127 A.D.3d 1134 [2nd Dept. 2015]; *Foti v. Fleetwood Ride, Inc.*, 57 A.D.3d 724 [2nd Dept. 2008]; *Ahmad v. Grimaldi*, 40 A.D.3d 786 [2nd Dept. 2007]; *Emil Norsac & Son., Inc. v. L.P. Transp. Inc.*, 30 A.D.3d 368 [2nd Dept. 2006]). Moreover, the Defendants' opposition by way of attorney affirmation is, on its own, insufficient (See *Trombetta v Cathone*, 59 AD3d 526 [2nd Dept 2009]; see

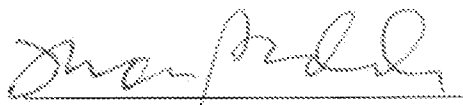
also Quintanilla v. Mark, 210 AD3d 713 [2nd Dept 2022][proffered need for depositions insufficient))

ORDERED that the Plaintiff's motion for summary judgment in favor of the Plaintiff and against the Defendants with respect to liability only is **GRANTED** in its entirety, and it is further

ORDERED, that the Defendants' "FIRST," "SECOND," "THIRD," "FIFTH," "SEVENTH," AND "TWELFTH" Affirmative Defenses are **DISMISSED**.

This constitutes the Decision and Order of the Court.

Dated: January 13, 2025
Mineola, N.Y.


Hon. Thomas Rademaker, J. S. C.

ENTERED

Jan 17 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE