

Carter v Perris

2020 NY Slip Op 34440(U)

December 15, 2020

Supreme Court, Queens County

Docket Number: 704965/2019

Judge: Frederick D.R. Sampson

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.

FILED

**12/21/2020
10:40 AM**

Short Form Order

**COUNTY CLERK
QUEENS COUNTY**

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 21
Justice

-----X

RICHARD CARTER,
Plaintiff,

-against-

Index No: 704965/2019
Motion Date: 11/12/2020
Motion Cal. No: 3
Motion Seq. No: 3

MICHELE PERRIS, ARTHUR A. OLIVARI
and ALEMANTE G. KASSA,

Defendants.

-----X

The following papers numbered E 51 to E 70 read on this motion for an order pursuant to CPLR §2221, an Order for leave to reargue the decision of Justice Frederick D.R. Sampson which granted summary judgment as to defendant Alemante G. Kassa only; 2) upon reargument issuing a new order denying the co-defendants' motion.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	E 51 - E 62
Answering Affidavits-Exhibits.....	E 64
Answering Affidavits-Exhibits	E 65 - E 66
Reply.....	E 67 - E 68
Reply	E 69 - E 70

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

Defendants' Michele Perris and Arthur A. Olivari's ("Olivari") motion to reargue the decision and Order of this Court dated August 13, 2020 and Entered August 14, 2020 [Mot. Seq. 2] is granted, and upon reargument the Court adheres to it's original determination.

Plaintiff commenced the instant action for alleged personal injuries sustained in a three vehicle chain collision which occurred on December 15, 2017. It appears upon the papers that plaintiff's vehicle (Vehicle 2) was rear ended by Olivari's vehicle (Vehicle 3) which then caused plaintiff's vehicle to strike defendant Alemante G. Kassa's ("Kassa" Vehicle 1) in the rear.

The Order which Olivari seeks to reargue granted Kassa summary judgement on the issue of liability. The instant application argues that the Court failed to consider Olivari's affidavit of merit in reaching its prior determination however, upon the Court considering same, Olivari has failed to raise a triable issue of fact.

Olivari's affidavit states that on the day in question he was traveling in slow moving traffic when Kassa's vehicle began to move from the middle lane of travel to the right lane and then veered back into the middle lane. Olivari further states that the action taken by Kassa, caused plaintiff to stop short, thereby causing Olivari to strike plaintiff's vehicle in the rear, which then caused plaintiff to strike Kassa in the rear. Kassa's affidavit of merit presented with the prior application states that he was stopped for a red light on Linden Boulevard, with plaintiff stopped behind him, when his vehicle was suddenly struck in the rear.

"[A] rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Klopchin v Masri*, 45 AD3d 737, 846 NYS2d 311 [2007]; see e.g. *Johnston v Spoto*, 47 AD3d 888, 850 NYS2d 204 [2008]; *Hakakian v McCabe*, 38 AD3d 493, 833 NYS2d 106 [2007]).

Here, as Olivari acknowledged that there was slow moving traffic approaching a controlled intersection, he can not claim that the plaintiff's stop was unanticipated (see *Hakakian v McCabe*, 38 AD3d 493, 833 NYS2d 106 [2007]; *Malone v Morillo*, 6 AD3d 324, 775 NYS2d 312 [2004]). Olivari's opinion that the plaintiff made a "short stop" is insufficient to raise a triable issue of fact as Olivari was obligated to take "appropriate precautions, including maintaining a safe distance" (see VTL 1129; see also *Harrington v. Kern*, 2008 NY Slip Op 5045, ¶ 2, 52 A.D.3d 473, 473, 859 N.Y.S.2d 480, 481-82 (App. Div. 2nd Dept.) *David v New York City Bd. of Educ.*, 19 AD3d 639, 639, 797 NYS2d 294 [2005]; see *Malone v Morillo*, 6 AD3d 324, 775 NYS2d 312 [2004]). Further, it appears upon the papers that upon Kassa's vehicle coming to a stop, plaintiff was able to come to a stop without striking the lead vehicle.

Accordingly, based upon the foregoing, defendants' application for reargument is granted, and upon reargument, the Court adheres to its original determination.

Dated: December 15, 2020



J.S.C.

FILED

12/21/2020
10:40 AM

COUNTY CLERK
QUEENS COUNTY

