

Harris v Bonno

2020 NY Slip Op 35530(U)

September 28, 2020

Supreme Court, Bronx County

Docket Number: Index No. 31576/18E

Judge: Ben R. Barbato

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**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM- PART 14**

Present: Honorable Ben R. Barbato

CHRISTINE L. HARRIS and CEARIA MARSHALL,

Plaintiffs,

-against-

ALEX J. BONNO and LOVESTINE HARRIS,

Defendants.

DECISION/ORDER

Index No.:31576/18E

Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion to dismiss:

Papers	Numbered
Notice of Motion, Affirmation and Exhibits Annexed	1
Affirmation in Opposition (Widom) and Exhibit Annexed	2
Affirmation in Opposition (Subhan)	3
Affirmation in Reply (Cohen)	4

The instant action sounds in personal injury arising from a motor vehicle accident occurring on January 13, 2018, on County Road 29, at or near Farnes Road in the Town of Canton, County of St. Lawrence, State of New York. Defendant, Alex J. Bonno, moves this court for an Order pursuant to CPLR §3212 awarding Summary Judgment dismissing the Plaintiff's Complaint and all Cross-Claims on the issue of liability.

The Defendant, Alex J. Bonno, submits his Affidavit stating that he was operating his vehicle on that roadway known as Route 29. He states that the roadway was icy due to a recent storm and therefore he was operating his vehicle "very slowly and with extreme caution". He also indicates that the speed limit on Route 29 at the location of the accident had a posted speed limit of 55 miles per hour. Mr. Bono testifies that moment before the accident he noticed the Co-

Defendant Harris' vehicle sliding on the icy road indicating that the vehicle was traveling south but the front of the vehicle was pointing east. At that time Mr. Bono claims his vehicle was about four to five car lengths in front of his and he further slowed his vehicle. He states that the Harris vehicle went partially off the road but then careened back onto the roadway entering his lane of travel at which time his vehicle made contact with the Harris vehicle.

Defendant Bono also submits a certified copy of the Police Accident Report, which in pertinent part states that the Harris vehicle was traveling south on Route 29 when Defendant Harris lost control of her vehicle sliding sideways entering into the other lane. The report further states that Defendant Bono attempted to avoid striking the Harris vehicle but failed. The Police Accident Report presented here is admissible based only on the observations of the recording officer and is clear that there was only one impact between the subject vehicles and that the damage to the Defendant, Harris' vehicle appeared only to the side of the vehicle and not to the rear of Defendant Harris' vehicle. (See.: McKinney's CPLR 4520 and 4540; CPLR 4518(a); CPLR 4518© *Memenza v. Cole*, 131 A.D.3d 1020 (2nd Dept. 2015), also see: *Silverhiold v. HUT CAB Corp.*, 251 A.D.2d (1st Dept. 1998)

The Plaintiff in opposition to Defendant's Bono's motion submits the Affidavit of the Plaintiff Christine Harris who states that she was the front seated passenger in that vehicle driven by the Defendant Lovestine Harris. She also states that she read the Police Accident Report and indicates that it was incorrect and inaccurate. Ms. Harris states that the vehicle in which she was a passenger was initially struck by the Defendant, Bono's vehicle in the rear and that impact caused the Defendant, Lovestine Harris, to lose control of her vehicle which she claims spun to the right. Ms. Harris further states that the Bono vehicle then struck the Harris vehicle a second time causing the vehicle to crossover to the northbound side of Route 29.

The Plaintiff also submits the Affidavit of Cearia Marshall who states that she was a rear seat passenger in that vehicle driven by the Defendant Lovestine Harris. She also states that she read the Police Accident Report and indicates that it was incorrect and inaccurate. Ms. Marshall states that the vehicle in which she was a passenger was initially struck by the Defendant, Bono's vehicle in the rear and that impact caused the Defendant, Lovestine Harris, to lose control of her vehicle which she claims spun to the right. Ms. Harris further states that the Bono vehicle then struck the Harris vehicle a second time causing the vehicle to crossover to the northbound side of Route 29.

Argument that the instant motion is premature is unavailing. The presumption that further inquiry may yield additional evidence not presently available for the court's consideration is speculative.

Based upon the information and Affidavits submitted Defendant, Alex J. Bono's motion for an Order pursuant to CPLR §3212 awarding Summary Judgment dismissing the Plaintiff's Complaint and all Cross-Claims on the issue of liability is granted.

The above constitutes the Decision and Order of the Court.

Dated: September 28, 2020


Hon. Ben R. Barbato, J.S.C.