

Quartey v Carrion

2021 NY Slip Op 33048(U)

December 15, 2021

Supreme Court, Bronx County

Docket Number: Index No. 24534/2019E

Judge: Veronica G. Hummel

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**

JULIAN QUARTEY,

Plaintiff,

-against-

SANDRA N. CARRION, YANILL CARINO, and LORENZA
CARINO,

Defendants.

Index No. 24534/2019E

HON. VERONICA G. HUMMEL, A.J.S.C.

Mot. Seq. No. 3

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF relevant to the motion of defendant SANDRA N. CARRION [Mot. Seq. 3], made pursuant to CPLR 2221(e), for an order granting leave to renew¹ the court's decision, dated July 17, 2019 (the Prior Decision), and upon renewal, granting defendant Carrion's motion [Mot. Seq. 2], made pursuant to CPLR 3212, for an order awarding moving defendant summary judgment dismissing the complaint and cross-claims alleged against her.

The facts of this action based on a four-car accident are outlined in the Prior Decision, and are incorporated herein. The court noted in the Prior Decision that "discovery has not been conducted".

Motion Seq. 3- Leave to renew

A motion to renew shall be based upon new facts not offered on the prior motion that would change the prior determination and shall contain reasonable justification for the failure to present such facts on the prior motion (CPLR 2221[e][2],[3]; *see Jordan v Yardeny*, 118 AD3d 945 [2d Dept 2014]; *Matter of Korman v Bellmore Pub. Schools*, 62 AD3d 882, 884 [2d Dept 2009]). "Although a motion for leave to renew generally must be based on newly-discovered facts, this requirement is a flexible one, and a court has the discretion to grant renewal upon facts known to the movant at the time of the original motion, provided that the movant offers a reasonable

¹ Of note, movant does not seek to reargue the prior decision. A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision. It is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept. 1992]; *Blair v Allstate Indem. Co.*, 124 AD3d 1224 [4th Dept 2015]; CPLR 2221[d]). A motion to reargue shall not include any matters of fact or law not offered on the prior motion (CPLR 2221 [d][2]; *Weiss v Bretton Woods Condominium II*, 151 AD3d 905 [2d Dept 2017]; *Bigun v Ahmed*, 150 AD3d 1186 [2d Dept 2017]).

justification for the failure to submit the additional facts on the original motion”(*Calle v Zimmerman*, 133 AD3d 809 [2d Dept 2015]; *Castor v Cuevas*, 137 AD3d 743 [2d Dept 2016]; *Matter of Allstate Ins. Co. v Liberty Mut. Ins.*, 58 AD3d 727, 728 [2d Dept 2009]; *Heaven v McGowan*, 40 AD3d 583, 586 [2d Dept 2007]). What constitutes a “reasonable justification” is within the Supreme Court’s discretion (*Heaven v McGowan*, *supra*; *Nwauwa v Mamos*, 53 AD3d 646 [2d Dept 2008]). Law office failure can be accepted as a reasonable excuse in the exercise of the court’s sound discretion (*Castor v Cuevas*, *supra*; *Rivera v Queens Ballpark Co., LLC*, 134 AD3d 796 [2d Dept 2015]).

Here, defendant Carrion submits new evidence in the form of recent deposition testimony by the parties establishing that movant defendant’s actions were not negligent and did not contribute to causing the accident. Plaintiff and the co-defendants do not oppose the branch of the motion that seeks renewal. Based on the new facts presented, the court exercises its discretion and grants the motion to renew.

Mot. Seq. 2 Summary Judgment in favor of defendant Carrion on renewal

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault (*see Harrigan v Sow*, 165 AD3d 463 [1st Dept 2018]; *Hilago v Vasquez*, 187 AD3d 683 [1st Dept 2020]). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident (*see Harrigan v Sow*, *supra*; *Hilago v Vasquez*, *supra*).

According to the deposition testimony of the movant defendant Carrion and the certified police report, the Carrion vehicle was struck from behind and pushed into plaintiff’s vehicle. In the supporting affidavit and at deposition, defendant Carrion avers that as she exited the parkway and was coming off of the exit ramp, her vehicle was hit very hard from behind by the Carino vehicle. The impact forced defendant Carrion’s vehicle forward into the plaintiff’s vehicle, which was forced forward into the non-party Pan vehicle.

At deposition, plaintiff testified that there was only one impact, reflecting movant defendant’s vehicle being forced into the rear of plaintiff’s car, which led to subsequent impacts to other parts of the plaintiff’s vehicle as he was pushed forward into the Pan vehicle. The co-defendant testified that, to her knowledge, the contact between her vehicle and the rear of movant’s

vehicle was the first impact in the collision.

Co-defendants do not oppose the motion.

In opposition to the motion for summary judgment, plaintiff argues, without additional evidentiary support, that defendant Carrion's testimony is self-interested and there is a question of fact as to the order in which the vehicles impacted. Plaintiff fails to address his own testimony and the co-defendant's testimony, however, which support defendant Carrion's version of events.

Based on the record, defendant Carrion sets forth a *prima facie* showing warranting the grant of summary judgment in favor of said defendant. "In a chain collision accident, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle" (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]). Whether the middle vehicle was fully stopped or moving "very slowly," the same rule applies to a stopped or stopping vehicle which is struck in the rear and propelled into another vehicle (*Skura v Wojtowski*, 165 AD3d 1196, 1199 [2d Dept 2018]). As plaintiff and co-defendant fail to contradict the movant's version of events and, in fact support that version, the opposition fails generate an issue of fact sufficient to require the denial of the motion for summary judgment (*Ferguson v Honda Lease Trust*, 34 A.D.3d 356 [1st Dept 2006]).

Plaintiff states in the opposition that, should the motion be granted, "plaintiff must be granted summary judgment" against co-defendants Carino. Although plaintiff did not move for summary judgment on these claims, the court may search the record and grant summary judgment in his favor because the claims are the subject of defendant Carrion's motion for summary judgment (C.P.L.R. § 3212(b); *Otto v Otto*, 192 AD3d 517, 518 (1st Dept 2021); see *Dunham v. Hilco Constr. Co.*, 89 NY2d 425[1996]; *Estate of Mirjani v DeVito*, 135 AD3d 616 [1st Dept 2016])).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is

ORDERED the part of the motion of defendant SANDRA N. CARRION [Mot. Seq. 3], made pursuant to CPLR 2221(e), for an order granting leave to renew the court's decision, dated July 17,2019 (the Prior Decision) is granted; and it is further

ORDERED that the part of the motion of movant defendant [Mot. Seq. 3]that seeks, upon renewal, an order granting defendant Carrion’s motion [Mot. Seq. 2], made pursuant to CPLR 3212, for summary judgment dismissing the complaint and cross-claims alleged against defendant Carrion is granted; and it is further

ORDERED that the court, in searching the record, grants plaintiff JULIAN QUARTEY partial summary judgment on liability in his favor as against defendants YANILL CARINO and LORENZA CARINO; and it is further

ORDEREED that the Clerk shall enter judgment dismissing the complaint and all cross-claims alleged against defendant Carrion and severing the remaining action; and it is further

ORDERED that the caption in this action shall henceforth read as;

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JULIAN QUARTEY,

Plaintiff

-against-

Index No. 24534/2019e

YANILL CARINO and LORENZA CARINO,

Defendants.

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This constitutes the decision and order of the court.

Dated: December 15, 2021

ENTER,

s/Hon. Veronica G. Hummel/signed 12/15/2021
Hon. Veronica G. Hummel, A.J.S.C.

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|--|--|--|---|
| 1. CHECK ONE..... | CASE DISPOSED IN ITS ENTIRETY | <input checked="" type="checkbox"/> | CASE STILL ACTIVE |
| 2. MOTION number 3 is granted and on
renewal Motion 2 is granted
..... | <input type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| 3. CHECK IF APPROPRIATE..... | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER | <input type="checkbox"/> SCHEDULE APPEARANCE |
| | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFEREE APPOINTMENT | |