

<b>Hasbrouck v Cannon</b>
2021 NY Slip Op 33772(U)
January 29, 2021
Supreme Court, Orange County
Docket Number: Index No. EF002603-2020
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange, at 285 Main Street, Goshen, New York 10924 on the 29th day of January, 2021.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

BLAKE M. HASBROUCK,

Plaintiff,

-against-

IAN D. CANNON, HUB TRUCK RENTAL CORP.,  
BLACKMAN PLUMBING SUPPLY, INC.,  
BLACKMAN PLUMBING SUPPLY, INC.,  
BLACKMAN PLUMBING SUPPLY COMPANY, INC.,  
BLACKMAN PLUMBING SUPPLY CO., LLC, and  
ABC CORP.,

Defendants.

VAZQUEZ-DOLES, J.S.C.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

**DECISION & ORDER**  
INDEX EF002603-2020  
Motion date: 10/16/2020  
Motion Seq. #1

The following papers numbered 1 - 14 were read on plaintiff's motion for summary judgment on the issues of liability and comparative fault:

Notice of Motion/Affirmation (Hasbrouck)/Exhibits A-D. ....	1-6
Affirmation in Support (Boughrum)/Exhibits 1-4.....	7-11
Affirmation in Opposition (Kreymer)/Exhibit A.....	12-13
Affirmation in Reply (Boughrum).....	14

Plaintiff's motion for summary judgment against defendant on the issues of liability and plaintiff's lack of comparative fault is **GRANTED**.

**Background and Procedural History**

In this negligence action, plaintiff seeks to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on August 9, 2018.

Plaintiff was traveling on Cantrell Avenue, towards an intersection with Columbia Avenue, in Middletown, New York, when struck by a vehicle operated by defendant Ian D. Cannon. Columbia Avenue is controlled by stop signs in both directions at the Cantrell Avenue intersection. Defendant failed to stop at the stop sign and yield right of way to plaintiff's vehicle.

Plaintiff commenced this action by filing a Summons and Verified Complaint on or about June 2, 2020, and an Amended Verified Complaint on June 6, 2020 (Exhibits 1 and 2 to moving papers). Defendants Ian D. Cannon, Hub Truck Rental Corp., Blackman Plumbing Supply, Inc., Blackman Plumbing Supply Company, Inc., and Blackman Plumbing Supply Co., LLC filed a Verified Answer with Affirmative Defenses and Cross Claims against co-defendant ABC Corp. on August 6, 2020 (Exhibit 3). Defendant ABC Corp. has failed to answer.

#### Discussion

Plaintiff asserts he is entitled to summary judgment on liability based on the defendant's failure to stop at a stop sign and yield right of way to plaintiff's vehicle (see N.Y. Veh. & Traf. Law §1110, §1142, and §1172 [McKinney]). Plaintiff submits his own affidavit in which he states that he was heading straight on Cantrell Avenue, which was not controlled by any traffic devices, towards the intersection with Columbia Avenue, when defendant entered the intersection directly in front of plaintiff, failing to stop at the stop sign on Columbia Avenue, causing plaintiff's vehicle to strike the driver's side door of defendant's vehicle.

The Court of Appeals has held that a plaintiff does not bear the burden of establishing the absence of his own comparative negligence in order to obtain partial summary judgment in a comparative negligence case (*Rodriguez v. City of New York*, 31 NY3d 312 [2018]).

In *Rodriguez*, the Court of Appeals reversed the finding of the Appellate Division, First

Department, that affirmed the denial of plaintiff's motion for partial summary judgment, on the basis that plaintiff failed to make a *prima facie* showing that he was free of comparative negligence (*See, Rodriguez v. City of New York*, 142 AD3d 778 [1<sup>st</sup> Dept 2016]).

The Court of Appeals held that Article 14-A of the Civil Practice Law & Rules provides that comparative negligence does not *bar* recovery, but can act to diminish the amount of damages otherwise recoverable, in the proportion of the claimant's culpable conduct (Civ. Prac. Law & Rules §1411). Moreover, section 1412 provides that such culpable conduct shall be an affirmative defense to be pleaded and proved by the party asserting the same.

The majority thus reasoned that to place the burden on the plaintiff to show an absence of comparative fault is inconsistent with the language of section 1412 (2018 NY Slip Op. at 3). "Comparative fault is not a defense to the cause of action of negligence, because it is not a defense to any element (duty, breach, causation) of plaintiff's *prima facie* cause of action for negligence . . . but rather a diminishment of the amount of damages" (Id at 779).

In their opposition papers, defendants Ian D. Cannon, Hub Truck Rental Corp., Blackman Plumbing Supply, Inc., Blackman Plumbing Supply Company, Inc., and Blackman Plumbing Supply Co., LLC argue that plaintiff's motion is moot because defendants (except ABC Corp.), conceded fault on October 5, 2020 (Exhibit A). Defendants claim that the plaintiff's interest in filing such motion was to trigger interest damages, and that the motion is premature for the serious injury threshold. However, plaintiff does not, as indicated in its reply, move here for summary judgment on serious injury. The Court need only address the issues of liability and comparative fault. Defendants filed their Concession of Fault on October 5, 2020, six days after plaintiff filed its motion for summary judgment. In addition, the concession letter was signed

only on behalf of defendants and did not provide for interest (see *Mahoney v Brockbank*, 142 AD3d 200 [2d Dept 2016]).

In any event, plaintiff argues that defendants' opposition was untimely filed. Plaintiff's notice of motion was filed on September 29, 2020, which was at least 16 days before the October 16, 2020 return date and therefore, defendants' opposition was due on October 9, 2020, at least seven days before the return date (see CPLR 2214[b]). As defendants submitted their opposition papers on October 14, 2020, without any reason or explanation for the late filing, their opposition is untimely and should not be considered (*Jiewen Lin v City of New York*, 117 AD3d 913 [2d Dept 2014]). Notwithstanding the fact that defendants' opposition is untimely, if the Court was to consider same, plaintiff's reply papers would also be considered, and the motion would be granted. Notwithstanding the fact that all defendants, except ABC Corp., conceded liability, with no opposition thereof, according to the police report, "The driver of vehicle #1 [Cannon] stated he was unfamiliar with the area, slowed his vehicle at the intersection, however he blew through a stop sign at the intersection of Columbia Ave and Cantrell Ave. The driver of vehicle #1 stated the incident was his fault and a result of him not making a stop . . ." (Exhibit A to plaintiff's affidavit). Upon the foregoing, it is ordered that plaintiff's motion for summary judgment on the issues of liability and comparative fault is granted.

#### Conclusion

Accordingly, it is hereby

**ORDERED** that plaintiff's motion for summary judgment on the issues of liability and comparative fault is **GRANTED** against all defendants; and

**ORDERED** that the remaining issues shall be limited to plaintiff's injuries and damages;

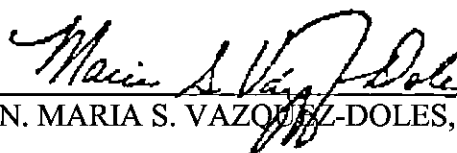
and it is further

**ORDERED** that a virtual preliminary conference shall be held in this matter before the undersigned on April 7, 2021, @ 4:00 p.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: January 29th, 2021  
Goshen, New York

ENTER :

  
HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of record via NYSCEF