

Makasarashvili v Flanagan

2023 NY Slip Op 32948(U)

August 23, 2023

Supreme Court, Kings County

Docket Number: Index No. 531788/2022

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23rd day of August 2023

HONORABLE FRANCOIS A. RIVERA
-----X
TAMAR MAKASARASHVILI

Plaintiff,

- against -

JOSEPH M. FLANAGAN and MICHAEL J. FLANAGAN

Defendants.
-----X

DECISION & ORDER

Index No.: 531788/2022

Oral Argument: 8/10/2023

Cal No.: 47, Ms. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on February 10, 2023, under motion sequence one, by Tamar Makasarashvili (hereinafter the plaintiff) for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against Joseph M. Flanagan and Michael J. Flanagan (hereinafter the defendants). The motion is opposed by the defendants.

- Notice of motion
- Affirmation in support
 - Exhibits A-D
- Statement of material facts
- Affirmation of defendants' counsel in opposition
- Affirmation of plaintiff's counsel in reply

BACKGROUND

On November 1, 2022, plaintiff commenced the instant action for damages for personal injuries by filing a summons and verified complaint with the Kings County Clerk's Office (KCCO). On November 1, 2022, the defendants joined issue by interposing and filing a joint verified answer. Plaintiff's verified complaint and affidavit allege the following salient facts.

On May 18, 2022, at approximately 9:05 P.M., plaintiff was operating a 2011 Toyota bearing New York State license plate number KFF8663 on East Hoffman Avenue at the

intersection with Pennsylvania Avenue in the Village of Lindenhurst, County of Suffolk, State of New York. The intersection of East Hoffman Avenue and Pennsylvania Avenue is controlled by a three-phase traffic light. On that date, time and place, plaintiff had stopped for twenty to thirty seconds for a red light. On that date, time and place Joseph M. Flanagan was operating a 2018 Volkswagen motor vehicle, bearing the New York State license plate number HV76793 with the permission of its owner, Michael J. Flanagan. Joseph M. Flanagan struck the rear of plaintiff's vehicle due to his negligent operation of his vehicle (hereinafter the subject accident). The subject accident caused the plaintiff to sustain serious physical injury.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Guiffirda v. Citibank*, 100 NY2d 72 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v. Gervasio*, 81 NY2d 1062 [1993]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions (*Poon v. Nisanov*, 162 AD3d 804 [2nd Dept 2018], quoting CPLR 3212 [b]). The moving party's

submissions must show that there is no defense to the cause of action or that the cause of action or defense has no merit (*Gobin v. Delgado*, 142 AD3d 1134 [2nd Dept 2016]).

Plaintiff seeks an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability. Plaintiff claims, among other things, that the defendants violated Vehicle and Traffic Law § 1129 (a) by not keeping the defendants' vehicle at a safe distance and speed while traveling behind plaintiff's vehicle. A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*Modena v. M & S Mech. Services, Inc.*, 181 AD3d 802 [2nd Dept 2020], citing, *Tutrani v. County of Suffolk*, 10 NY3d 906, 908 [2008]).

In support of the motion, plaintiff submitted, among other things, plaintiff's own affidavit and a certified police report of the subject accident. Plaintiff's affidavit demonstrated that the front of the defendants' vehicle struck the rear of the plaintiff's vehicle while the plaintiff was stopped for twenty to thirty seconds for a red light (see *Batashvili v. VelizPalacios*, 170 AD3d 791, 792 [2nd Dept 2019]; *Lopez v. Dobbins*, 164 AD3d 776, 777 [2nd Dept 2016]). Plaintiff offered the police report to admit the statement that Joseph M. Flanagan gave the police at the time and place of the accident. His statement admitted that when he was looking down and took his eyes of the road, he struck the plaintiff in the rear.

The only evidence the defendants submitted was an affirmation of their counsel in which they claimed that the motion was premature. To establish that a summary judgment motion is premature, the nonmoving party must offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of the moving party. The mere hope or speculation that evidence

sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion (*Lazarre v. Gragston*, 164 AD3d 574, 575 [2nd Dept 2018]). Here, the defendants failed to offer such an evidentiary submission. Consequently, plaintiff has made a prima facie showing of entitlement to summary judgment in plaintiff's favor on the issue liability and the defendants have not raised a triable issue of fact.

CONCLUSION

The motion by plaintiff Tamar Makasarashvili for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against defendants Joseph M. Flanagan and Michael J. Flanagan is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera

x

J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.